Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 79-880

# In the Supreme Court of the United States

OCTOBER TERM, 1979

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HENRY KISSINGER, ET AL., PETITIONERS

*v.*

MORTON HALPERIN, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## JOINT APPENDIX

**Volume I**

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**Petition for writ of certiorari filed December 7, 1979**
**Certiorari granted May 19, 1980**

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## CIVIL DOCKET

**United States District Court for the District of Columbia**

MORTON H. HALPERIN

*vs.*

HENRY A. KISSINGER, et al

C.A. No 1187-73

| Parties: | | Attorneys |
|---|---|---|
| MORTON H. HALPERIN<br>INA HALPERIN, suing individually and on behalf of their minor children,<br>DAVID HALPERIN<br>MARK HALPERIN<br>GARY HALPERIN | Mark H. Lynch<br>600 Penna. Ave.<br>Wash., D.C. 20003<br>John H.F. Shattuck<br>410 1st St., S.E.<br>544-1681<br>Washington., D.C. 20036<br>Jerry Berman<br>Mark D. Rosenbaum<br>633 S. Shatto Pl.<br>Los Angeles, Calif. 90005<br>(213) 487-1720 | Leon Friedman<br>Melvin L. Wulf<br>410 1st St., SE.<br>John F. Dienelt<br>Walter B. Slocombe<br>1101 17th St., N.W.<br>Miller, Cassidy, Larroca & Lewin<br>2555 M St., NW 20037<br>293-6400 |
| | *v* | |
| 1. HENRY A. KISSINGER | Lubomyr M. Jachnycky<br>Dept. of Justice | Jonathan B. Smith<br>Benjamin Flannagan |

| Parties: | | Attorneys |
|---|---|---|
| | David C. Acheson<br>1100 Conn. Ave., NW<br>452-5890 | Elizabeth G. Whitaker<br>Edward S. Christenbury<br>Dept. of Justice<br>739-2301 |
| 2. RICHARD M. NIXON | -do-<br>William Hundley<br>Cary Mark Feldman<br>1709 N.Y. Ave., N.W., 205 | -do- |
| 3. JOHN N. MITCHELL | Jonathan Smith<br>E.G. Whitaker<br>B. Flannagan<br>E. Christenbury<br>Dept. of Justice | Plato Cacheris<br>1709 N.Y. Ave., N.W. |
| 4. H.R. HALDEMAN | -do-<br>*Ross O'Donoghue<br>740 15th St., N.W. | John J. Wilson<br>Frank Strickler<br>815 15th St., N.W. |
| 5. JOHN EHRLICHMAN | *Lawrence H. Schwartz<br>Robert M. Adler<br>1725 K St., N.W.<br>331-7530 | -do- |
| 6. ALEXANDER HAIG | David C. Acheson<br>1100 Conn. Ave., N.W.<br>452-5890 | Jonathan B. Smith<br>Benjamin Flannagan<br>Edward Christenbury<br>Dept. of Justice |

| Parties: | | Attorneys |
|---|---|---|
| 7. WILLIAM C. SULLIVAN | -do- | Joseph E. Casey<br>1200 18th St., N.W. |
| 8. ROBERT C. MARDIAN | -do- | Edward S. Christenbury<br>Elizabeth G. Whitaker<br>Dept. of Justice 739-2361 |
| 9. CLARENCE KELLEY, Director of FBI | -do- | Edward S. Christenbury<br>Elizabeth Gere Whitaker<br>Dept. of Justice |
| 10. JEB STUART MAGRUDER | James Bierbower<br>Alvin B. Davis<br>1625 K St., N.W. | Sally S. Reid<br>1819 H St., N.W. |
| 11. JOHN DOE | -do- | All federal defts.:<br>D. Jeffrey Hirschberg<br>Dept. of Justice<br>739-2361 |
| 12. RICHARD ROE and other unknown agents of the FBI | -do- | George W. Calhoun<br>Dept. of Justice (20530) |
| 13. JAMES POE | | David C. Acheson<br>1100 Conn. Ave., N.W.<br>452-5890 |
| 14. RICHARD DOE and other employees of the Executive Department and other agencies of government | | -do- |

| Parties: | Attorneys |
|---|---|
| 15. CHESAPEAKE AND POTOMAC TELEPHONE COMPANY | Donna M. Murasky (452-6000)<br>Michael Boudin<br>888 16th St., N.W.<br>888 16th St., N.W.<br>452-6088 |
| MORTON H. HALPERIN<br>INA HALPERIN, suing individually and on behalf of their minor children,<br>DAVID HALPERIN,<br>MARK HALPERIN<br>GARY HALPERIN | Melvin L. Wulf<br>ACLU<br>401 First St. S.E.<br>John F. Dienelt<br>Walter B. Slocombe<br>1101 17th St., N.W.<br>Leon Friedman<br>410 1st. Street, S.E. | |
| *v.* | | |
| 1. HENRY A. KISSINGER | Larry L. Gregg<br>Dept. of Justice<br>739-3227 20530<br>Jonathan B. Smith<br>Dept. of Justice | R. Joseph Sher<br>William G. Hundley<br>Dept. of Justice |
| 2. JOHN N. MITCHELL | Plato Cacheris (Individ)<br>1709 N.Y. Ave., N.W. 20006 | -do- |

| Parties: | | Attorneys |
|---|---|---|
| 3. H. R. HALDEMAN | John J. Wilson<br>Frank H. Strickler<br>815 15th St NW 20005 | -do- |
| 4. JOHN EHRLICHMAN | Robert L. Keuch<br>Dept of Justice<br>Lawrence K. Schwartz<br>1725 K St., N.W. 20001 | -do- |
| 5. ALEXANDER HAIG | Henry Jones<br>748 6th St., N.W. | -do- |
| 6. WILLIAM C. SULLIVAN | Joseph E. Casey<br>1200 18th St., N.W. | -do- |
| 7. WILLIAM D. RUCKELSHAUS, Acting Director of the FBI | | |
| 8. JOHN DOE, | | |
| 9. RICHARD ROE, and other unknown agents of the FBI | | |
| 10. JAMES POE, | | |
| 11. RICHARD ROE, and other employees of the Executive Department and other agencies of government | | |

| | | |
|---|---|---|
| 12. CHESAPEAKE AND POTOMAC TELEPHONE CO. | Michael Boudin<br>Donna Murasky<br>888 16th St., N.W.<br>452-6000 | David E. McGiffert<br>888 16th St., N.W.<br>452-6000 |
| 13. ALEXANDER P. BUTTERFIELD | Pro se<br>7416 Admiral Drive<br>#13<br>Alexandria, Va. | Walter Hellerstein<br>888 16th St. NW. 20006 |
| 14. JEB STUART MAGRUDER | | Sally S. Reid<br>Smiley & Lear<br>1819 H St., NW 20006<br>James J. Bierbower<br>Alvin B. Davis<br>1625 K St., N.W. |

MORTON H. HALPERIN, ET AL

*v.*

HENRY A. KISSINGER, ET AL

| 1973 | | PROCEEDINGS |
|---|---|---|
| Jun | 14 | Complaint, appearance |
| Jun | 14 | Summons, Copies (14) and Copies (10) of Complaint issued. |
| Jun | 14 | Motion to suppress the contents of certain intercepted wire communications for a protective order and further relief. Affidavit: Exhibits A thru F: P&A's. |
| Jun | 19 | Appearance of Edward S. Christenbury as counsel for defts. #1 thru #7; Cal/N. |
| Jun | 19 | Appearance of Benjamin C. Flannagan as counsel for defts. #1 thru #7; Cal/N. |
| Jun | 19 | Response of defts. #1 thru #7 to pltfs' motion to suppress; appendix A; c/m 6-19-73. |
| Jun | 21 | APPEARANCE of Walter B. Slocombe as counsel for pltfs; Cal/N. |
| Jun | 21 | APPEARANCE of Leon Friedman as counsel for pltfs; Cal/N. |
| Jun | 21 | REASSIGNMENT of case of June 20, 1973 from Judge Flannery to Judge Smith, Hart, J. |
| Jun | 22 | MOTION of pltfs. for leave to take deposition of William D. Ruckelshaus; affidavit; Exhibit A; c/s 6-22-73; M.C. |
| Jun | 27 | MOTION Hearing: Pltf's motion for a Protective Order heard and Granted (In Part) (OTBP) (Rep-D. Copeland) |
| Jun | 28 | ORDER granting all memoranda, and other records relating to interception communications of pltf's shall be maintained by the Court under Seal. (N) Smith, J. |
| Jun | 29 | RESPONSE of deft. 7 to pltfs' motion for leave to take deposition; c/m 6-29-73. |
| Jul | 2 | SUMMONS & copy of complaint issued to deft. #3. ser. 7-9. |

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| Jul | 3 | NOTICE by defts. of submission of documents; c/m 7-3-73. |
| Jul | 6 | STIPULATION of counsel that the time for Deft #12 to answer be extended to 7/18/73. |
| Jul | 10 | ORDER denying pltfs. motion for leave to take deposition. (N) Smith, J. |
| Jul | 11 | MOTION OF PLTF to compel surrender of indices; c/m 7/11/73; M.C. |
| Jul | 18 | ANSWER of deft. #12 to the complaint; c/m 7-18-73; appearance of Hugh B. Cox. |
| Jul | 18 | OPPOSITION of defts. #1 thru #7 to pltfs' motion to compel surrender of indices; c/m 7-18-73. |
| Jul | 19 | REQUEST by pltf. to deft. #12 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #1 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #2 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #3 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #4 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #5 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. #6 for production of documents; c/m 7-19-73. |
| Jul | 19 | REQUEST by pltf. to deft. Clarence Kelly for production of documents: c/m 7-19-73. |
| Jul | 26 | NOTICE of defts. of intent to submit additional documents; c/m 7/25/73. |
| Aug. | 13 | SUMMONS Copy (1) and Copy (1) of complaint issued deft. #1, ser 8-16-73. |
| Aug | 14 | ANSWER of defts. #3 and #4 to complaint; c/m 8-14-73; appearance of John J. Wilson and Frank H. Strickler. |

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| Aug. | 14 | ANSWER of deft. Mitchell in his former official capacity; c/m 8-14-73. |
| Aug. | 14 | MOTION of deft. Mitchell in his official capacity to dismiss; P&A; c/m 8-14-73. |
| Aug | 14 | ANSWER of defts. #1,2,3,4,5,6 & 7 to complaint; c/m 8-14-73. |
| Aug | 16 | OBJECTIONS of Federal Defts. to pltf's request for production of documents c/m 8-15 |
| Aug | 16 | ORDER directing plaintiffs motion to compel Surrender of indices Denied; and that the indices of overheard conversation described in paragraph 3 of the Department of Justice Notice of Submission of Documents filed July 3, 1973 be preserved. (N) Smith, J. |
| Aug. | 21 | RESPONSE of deft. #12 to pltfs' request for production and inspection of documents; Affidavit; c/m 8-20-73. |
| Sept. | 26 | MOTION of pltfs. for leave to file opposition to motion of deft #2 to dismiss; affidavit; memorandum; c/m 9-24-73. |
| Oct | 15 | NOTICE of pltf of taking deposition of deft. #6; c/m 10-3-73. |
| Nov. | 1 | WITHDRAWAL of Hugh B. Cox as counsel for deft. Chesapeake & Potomac Telephone Co. and appearance of David E. McGiffert. |
| Nov. | 1 | DEPOSITION of William D. Ruckelshaus taken on July 25, 1973 for the pltfs. |
| Nov. | 12 | STIPULATION granting stay of proceedings on deft's Mitchell's motion to dismiss parties shall notify Court when they wish to proceed, approved. (N) Smith, J. |
| Nov. | 14 | APPEARANCE of Walter Hellerstein as counsel for deft. #12; cal/n. |
| Nov. | 30 | MEMORANDUM of pltfs' in support of motion to compel production of certain documents and to take the deposition of deft. William C. Sullivan; Table of Authorities; Affidavits (2); c/m 11-30-73, Exhibits A-J. |

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| Dec. | 5 | MOTION of Defts. #1, 2, 3, 4, 5, 6 and Kelly for enlargement of time; P&A: c/m 12-5-73. |
| Dec | 27 | ORDER granting deft's motion for enlargement of time and further order of time within which defts may file their response to pltf's consolidated motion be and the same enlarged to and including January 4, 1974. (N) (See order for details) Smith, J. |
| **1974** | | |
| Jan. | 4 | MOTION by Federal Defts, Kissinger, Haig, Haldeman, Ehrlichman, Mitchell, Kelley and Sullivan for a further enlargement of time; P&A's; c/m 1-4-74. |
| Jan | 11 | RESPONSE of pltfs' to Federal defts' motion for enlargement of time; c/m 1-9-74. |
| Jan | 14 | RESPONSE of defts. #1, 2, 3, 4, 5, 6, and Kelley to motion of pltfs. to compel discovery and for a protective order; table; c/m 1-14-74. |
| Jan | 24 | NOTICE by defts. #2, 3, and 4 and defts. #1, 5, 6 and Kelley of submission of additional documents; c/m 1-24-74. |
| Jan | 28 | REPLY by pltfs. to Federal defts. response to motion consolidated by pltf.; c/m 1-28-74. |
| Mar | 22 | MOTION by pltf. to compel discovery, argued and granted. (Rep: D. Copeland) Smith, J. |
| Apr | 1 | ORDER granting pltfs. motion for production of documents and that within 10 days of this Order defts. shall advise the Court if any of said documents or portions thereof are not in their judgment relevant to the subject matter in this action. (N) Smith, J. |
| Apr. | 5 | NOTICE by defts. #1, 2, 3, 4, 5, 6 and Kelley of submission of additional document; c/m 4-5-74. |
| Apr | 16 | NOTICE by defts. #1, 2, 3, 4, 5, 6 and Kelley of filing of affidavit; affidavit of Edward S. Christenbury; c/m 4-16-74. |

Apr 18 ORDER directing pltfs. to submit list of documents by 4-29-74 and allowing defts. to file objections within 10 days after copies of documents are made. (N) Smith, J.

Apr 19 AFFIDAVIT of Edward Christenbury filed on 4-16-74 under Court Seal this date. (Affidavit in Chambers)

Apr 30 AFFIDAVIT of Water Slocombe; notice; c/m 4-29-74. (Under Court Seal)

May 17 ORDER permitting Committee on the Judiciary to inspect all in camera documents impounded by the Court pursuant to its Order of June 28, 1973. (N) Smith, J.

May 10 NOTICE by pltfs. of filing Affidavit; Affidavit of Walter Slocombe; attached and filed under seal. (Affidavit in Chambers)

May 31 MOTION of Federal deft. Clarence M. Kelley for an order modifying Court's protective order of April 1, 1974; Appendix A; B, C; memorandum; c/m 5-31-74.

May 31 ORDER modifying certain portions of the Court's Order entered 4-1-74; directing all other provisions of this Court's Order of 4-1-74 to remain in effect. (N) Smith, J.

Jun 5 MOTION by federal deft. Clarence M. Kelley for an Order amending this Court's Order of May 31, 1974; and supporting points and authorities in appendix A; c/m 6-5-74.

June 7 RESPONSE by pltfs. to motion of federal deft., Clarence M. Kelly for an Order modifying this court's protective order of 4-1-74; exhibits A & B.

Jun 5 ORDER amending Court's Order of May 31, 1974 permitting federal deft., Clarence M. Kelly to make copy of documents set forth in the appendix to the June 4, 1974 letter of associate counsel Gill and to provide such documents to the House of Representatives Com-

mittee on the Judiciary in accordance with Court's Order of that date. (N) Smith, J.

Jun 12 MOTION by deft. #1 for an Order modifying this Court's Order of 4-1-74; and supporting points and authorities; c/m 6-12-74.

Jun 13 ORDER modifying Order of 4-1-74. Smith, J.

Jun 14 MOTION by pltfs. for expedited consideration of motion by pltfs. for an Order modifying this Court's Order of 4-1-74.

Jun 14 MOTION by pltfs. for an Order modifying this Court's Order of 4-1-74 and supporting points and authorities; c/s 6-14-74.

Jun 14 MOTION of federal deft., Clarence M. Kelley for an Order modifying this Court's Order of 4-1-74 and supporting points and authorities; appendix A; appendix B; c/m 6-14-74.

Jun 14 ORDER modifying Court's Order dated 4-1-74 permitting deft. Kelly to make available to Chairman J.W. Fulbright 1 copy of each document impounded by the Court pursuant to its Order of June 28, 1973 except for logs of the conversations of the pltfs. (N) Smith, J.

Jun 18 OPPOSITION by federal defts. to pltfs. motion to modify this Court's Order of April 1, 1974; c/m 6-18-74.

Jun 19 MOTION of pltf. for Order modifying the Court's Order of April 1, 1974, denied. (Rep: R. Weber) Smith, J.

Jun 21 ORDER denying motion of pltfs. to modify this Court's order of April 1, 1974 with regard to documents. (N) (Signed 6-19-74) Smith, J.

Jun 25 MOTION of deft. Clarence M. Kelly for an order modifying Court's order of April 1, 1974; c/m 6-25.

Jun 25 ORDER modifying Order of 4-1-74 to permit deft. Kelly to make documents impounded by

Order of 6-28-74 and certain other information available to certain persons. (N) Smith, J.

July 5 MOTION by pltfs. to permit Court Reporter to take deposition of deft. 6; c/m—.

Jul 8 MOTION by pltfs. for an Order permitting pltfs. to file amended complaint and modifying this Court's protective order of April 1, 1974 to permit the amended complaint to be filed publicly; exhibit; P&A's; c/m—(Sealed in chambers)

Jul 9 MOTION by pltfs. for an Order in connection with taking depositions of Muriel Hartley, Lawrence Higby and Todd Hullin; P&A's; c/s 7-9-74.

Jul 9 ORDER permitting taking depositions of Muriel Hartley, Lawrence Higby and Todd Hullin; counsel only permitted to have access to documents under Court's Order of April 1, 1974. (N) Smith, J.

Jul 9 ORDER permitting BPA Reporting Associates, Inc., 294 Washington Street, Boston, Mass., 02108, to take deposition of deft. #6, William C. Sullivan. (N) Smith, J.

Jul 10 MOTION by deft. #12 for an Order modifying this Court's Order of April 1, 1974; memorandum; c/m 7-10-74.

Jul 15 FOURTH MOTION by federal deft. Clarence M. Kelley for an Order modifying this Court's Order of May 1, 1974; c/m 7-15-74.

Jul 15 ORDER modifying Court's Order of April 1, 1974 to permit deft. Clarence M. Kelley to make available to J. Fred Buzhardt, counsel to the President, Leonard Garment, Assistant to the President and George P. Williams, Associate Counsel one copy of each of documents impounded by this Court pursuant to its Order of June 28, 1973. (N) Smith, J.

Jul 17 APPEARANCE of Joseph E. Casey as attorney for deft. #6. CD/N

**CIVIL DOCKET**

| | | |
|---|---|---|
| July | 18 | MEMORANDUM of the federal defts. in opposition to the pltfs. motion to modify this Court's protective order to permit the amended complaint to be filed publicly; c/m 7-18-74. |
| July | 19 | ORDER modifying Court's Order dated 4-1-74 permitting deft. #12 to disclose documents. (N) Smith, J. |
| Aug | 2 | ORDER granting pltfs. leave to file an amended complaint. (N) Smith, J. |
| Aug | 2 | AMENDED complaint by pltfs. adding Alexander P. Butterfield and Jeb Stuart Magruder as defts.; and amending paragraphs 11A, 11B, 18A, 20A, 26A, 28A, and 6A. |
| Aug | 2 | SUMMONS, copy (1) and copy (1) of amended complaint issued to def. #13: Ser: 8-12-74 |
| Aug | 2 | SUMMONS, copy (1) and copy (1) of amended complaint issued to deft. #14: Ser: 8-14-74. |
| Aug | 2 | SUMMONS, copy (1) and copy (1) of amended complaint issued to D.A.: |
| Aug | 2 | SUMMONS, copy (1) and copy (1) of amended complaint issued to AG: |
| Aug | 2 | APPEARANCE of John F. Dienelt as attorney for pltfs. CD/N |
| Aug | 8 | STIPULATION extending time to and including Aug. 27, 1974 for deft. Chesapeake and Potomac Telephone Co. to answer, move, or otherwise plead to amended complaint. (FIAT) (N) Smith, J. |
| Aug | 9 | STIPULATION extending for an additional twenty (20) days federal defts. time within which to respond to pltfs. amended complaint |

| | | |
|---|---|---|
| | | up to and including Sept. 1, 1974, approved. (FIAT) (N) 8-8-74 Smith, J. |
| Aug | 19 | DEPOSITION of Muriel L. Hartley for pltfs. published and filed. |
| Aug | 22 | STIPULATION extending time for deft. H. R. Haldeman to respond to pltfs. amended complaint to and including 9-4-74. (FIAT) (Signed 8-22-74) (N) Smith, J. |
| Aug | 23 | MOTION by pltfs. for production of certain deleted materials; P&A's; c/m 8-22. |
| Aug | 23 | STIPULATION extending time for deft., Alexander P. Butterfield, to respond to pltfs. amended complaint to and including Sept. 1, 1974. APPROVED. (N) (Signed 8-22-74) Smith, J. |
| Aug | 27 | ANSWER to deft. #12, The Chesapeake & Potomac Telephone Co., to amended complaint; c/m 8-27-74. |
| Sept | 3 | ANSWER of deft. #13, Alexander P. Butterfield to complaint and amended complaint; c/m 8-30-74. Appearance of Sally S. Reid. |
| Sept | 4 | OPPOSITION by defts. #1 thru #7 in part to the pltfs' motion for production of certain deleted materials; c/m 9-4-74. (Filed and placed under seal as of 9-4-74.) |
| Sept | 9 | MOTION by federal defts. for enlargement of time within which to answer the amended complaint; P&A's; c/m 9-9-74. |
| Sept | 9 | APPEARANCE of Jonathan B. Smith as attorney for federal defts. CD/N |
| Sept | 9 | STIPULATION enlarging time of deft. H. R. Haldeman to respond to pltfs. amended complaint to and including Sept. 12, 1974 or until 3 days after the answer of federal defts. (FIAT)(N) Smith, J. |
| Sept | 9 | STIPULATION enlarging time of federal defts. to respond to pltfs. amended complaint |

for an additional 5 days to and including 9-7-74. (FIAT)(N) Smith, J.

Sept. 16 ORDER granting motion of federal defts. for enlargement of time to answer amended complaint to and including Sept. 29, 1974. (N) Smith, J.

Sept 24 NOTICE by federal defts. of submission of additional document; c/m 9-24-74.

Sept 24 ANSWER by deft. #4 to amended complaint; c/m 9-16-74.

Sept 24 FIFTH MOTION by federal deft. Clarence M. Kelley for an Order modifying this Court's Order of April 1, 1974 and supporting points and authorities; attachment; c/m 9-24-74.

Sept 25 ANSWER by deft. #14, Jeb Stuart Magruder to complaint and amended complaint; c/m 9-24. Appearance of James J. Bierbower as attorney for deft.

Sept 30 MOTION by pltfs. for leave to file second amended complaint; P&A's; exhibit; c/m 9-30-74.

Sept 30 ANSWER by defts. #2, 3, 4, 1, 5, 6 and Kelley to amended complaint; c/m 9-30

Oct 1 ORDER granting federal deft. Clarence M. Kelley's motion for modification of Court's Order of April 1, 1974; permitting deft. to answer pltfs. interrogatories dated August 8, 1974 by pltfs. (N) Smith, J.

Oct 2 STIPULATION dismissing action against deft. Alexander P. Butterfield with prejudice; each party to bear his own costs. "Let this be filed". (N) (Signed 10-2-74) Smith, J.

Oct 3 CERTIFICATE of additional service of Stipulation of Dismissal on 10/2/74.

Oct 3 ANSWER of defendant #2, in his individual capacity, to the complaint; c/m 10-2-74. App. Plato Cacheris.

Oct 8 ANSWER by deft. H. R. Haldeman in his individual capacity to the complaint c/m 10-7-74.

Oct 10 MOTION by federal defts. for an enlargement of time to respond to the pltfs. motion for leave to file second amended complaint; c/m 10-10-74.

Oct 16 MOTION by deft. John N. Mitchell for an enlargement of time; c/m 10-15.

Oct 15 ORDER granting federal defts. motion for enlargement to time to respond to pltfs. motion for leave to file second amended complaint to and including October 20, 1974. (N) Smith, J.

Oct 18 MOTION by pltfs. for an Order requiring search for and production of additional materials; P&A's; affidavit of Walter Slocombe; exhibit A; exhibit B; exhibit C; exhibit D; exhibit E; exhibit F; G, H,I; c/m 10-18.

Oct 18 ORDER granting deft. John N. Mitchell motion for enlargement of time to respond to pltfs. motion for leave to file second amended complaint to and including Oct. 20, 1974. (N) Smith, J.

Oct 22 NOTICE by pltfs. to take deposition of Alexander M. Haig; c/m 10-22-74.

Oct 22 MOTION by pltfs. for an Order in connection with taking depositions of Alexander M. Haig and other defts. and points and authorities in support thereof; c/m 10-22-74.

Oct 22 ORDER granting pltfs. leave to file second amended complaint. (N) Smith, J.

Oct 22 SECOND amended complaint changing caption by pltfs.

Oct 23 ORDER allowing Ward and Paul, Inc. to take the deposition of General Haig in Washington, D.C. pursuant to specific directions in Court Order dated 4-1-74. (N) Smith, J.

Nov 1 STIPULATION for enlargement of time within which federal defts. may respond to pltfs. motion for an Order requiring search for and production of additional materials an additional 10 days up to and including 11-8-74, APPROVED. (N) Smith, J.

Nov. 7 APPEARANCE of Ross O'Donoghue as counsel for deft. H. R. Haldeman. CD/N

Nov 11 STIPULATION permitting federal defts. additional 7 days up to and including 11-15-74 to respond to pltfs. motion for an Order requiring search for and production of additional materials. (N) Smith, J.

Nov. 15 RESPONSE by federal defts., Kissinger, Haig, and Kelly to pltfs. motion for an Order requiring a search for and production of additional materials; c/m 11-15-74.

Nov 15 MOTION by defts. #3, 4, 5, and 7 in their former official capacity for an enlargement of time; c/m 11-15-74.

Nov 18 SUMMONS, copy (1) and copy (1) of second amended complaint issued to deft. #2, Richard M. Nixon: ser. 12-12-74

Nov 18 SUMMONS, copy (1) and copy (1) of second amended complaint issued to deft. #8, Robert C. Mardian: N.S.

Nov 18 MOTION by Attorney General to permit *in camera* submission of motion of the Department of Justice to withdraw.

Nov 18 ORDER permitting *in camera* submission of motion of the Department of Justice to withdraw as counsel. (N) Smith, J.

Nov 18 ORDER granting defts. Haldeman, Ehrlichman, Mitchell and Sullivan's motion for enlargement of time to respond to pltfs. motion for an Order requiring a search for and production of additional materials to and including 11-25-74. (N) Smith, J.

Nov 25 DEPOSITION of H. W. William Caming for pltf.

Nov 27 OPPOSITION by deft. #7 to motion of Attorney General to permit the in camera submission; P&A; request for oral argument; c/m 11-26-74.

Nov 27 MOTION by deft. #7 in opposition to in camera motion of Attorney General William B. Saxbe for an order permitting Department of Justice Attorneys to withdraw as counsel of record for deft. #7; request for oral argument; attachment; P&A; c/m 11-26-74.

Dec 2 STIPULATION for enlargement of time within which federal defts. Haldeman, Ehrlichman, Mitchell, and Sullivan may respond to pltfs. motion for an Order requiring search for and production of additional material for 10 days up to and including December 6, 1974. (N) Smith, J.

Dec 6 APPEARANCE of John J. Wilson and Frank H. Strickler as counsel for deft. #4, H. R. Haldeman. CD/N

Dec 6 DEPOSITION of Tod Hullin for pltfs. by certified mail.

Dec 13 MOTION of Richard M. Nixon to quash subpoena duces tecum; P&A's exhibit A; exhibit 1, 2; exhibit B; exhibit C; c/s 12-13-74.

Dec 13 OBJECTION of Philip W. Buchen to the inspection and copying of certain of the materials designated in the Pltfs. subpoena duces tecum; c/m

Dec 18 TRANSCRIPT of proceedings for 12-9-74, pages 1–21. (Rep: R. Weber) Court copy.

Dec 23 LIST of copies made by pltff. pursuant to this Court's April 1, 1974, Order; c/m 12-23-74.

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Jan 2 MOTION by pltfs to enforce subpoena duces tecum; P&A's; exhibit A; exhibit 1, 2; exhibit B; c/s and c/m 12-31-74.

Jan 3 OPPOSITION of pltfs. to motion of Richard M. Nixon to quash subpoena duces tecum; exhibit A and B; c/s 1-3-75.

Jan 3 MEMORANDUM by pltfs. on allegations with respect to deft. #6; c/m 1-3-75.

Jan 3 NOTICE by pltfs. of additional copy made pursuant to this Courts April 1, 1974 Order; c/m 1-3-75.

Jan 7 RESPONSE of Philip W. Buchen to pltfs. motion to enforce subpoena duces tecum and Richard M. Nixon's motion to quash subpoena duces tecum attachments; (2); c/m 1-7.

Jan 7 SUBMISSION by pltfs. of supplemental material in support of pltfs. opposition to motion of Richard M. Nixon to quash subpoena duces tecum; exhibit A; c/m 1-7.

Jan 7 WITHDRAWAL of appearance of Henry E. Peterson, Edward S. Christenbury, Benjamin C. Flannagan and Jonathan B. Smith as counsel for deft. John M. Mitchell and appearance of Plato Cacheris and William G. Hundley as counsel for said deft. CD/N

Jan 9 APPEARANCE of Henry Jones as attorney for deft. #4. CD/N

Jan 9 WITHDRAWAL of John J. Wilson and Frank H. Strickler as attorneys for deft. #4. CD/N

Jan 9 MOTION of deft. Richard Nixon to quash subpoena heard and taken under advisement. (Rep: R. Weber) Smith, J.

Jan 16 MEMORANDUM of the Attorney General in re: 28 USC 516; c/m 1-15.

Jan 17 TRANSCRIPT of proceedings of January 9, 1975, pages 1-37. (Rep: R. Weber); Court copy.

Jan 20 ORDER denying without prejudice in camera motion of Attorney General William B. Saxbe for an Order permitting Dept of Justice attorneys to withdraw as counsel of record. (N) Smith, J.

Feb 7 STIPULATION extending time for Federal defts. to respond to Second Amended Complaint of pltfs. to & including Feb 24, 1975, approved. (N) Smith, J.

Feb 10 MOTION of Richard M. Nixon for enlargement of time to respond to Second Amended Complaint of pltfs and memorandum of points & authorities in support thereof; c/m 2-10-75.

Feb 11 SUMMONS, copy (1) and copy (1) of second amended complaint issued to deft. #8, Robert C. Mardian.: serv. 2-25.

Feb 11 STIPULATION for extension of time within which deft. Chesapeake and Potomac Telephone Company may answer in response to pltfs. second amended complaint extended to and including 2-24-75, APPROVED. (N)Smith, J.

Feb 13 ORDER extending time within which deft. Nixon may respond to pltfs. second amended complaint enlarged for an additional 30 days to and including 3-12-75. (N) Smith, J.

Feb 24 ANSWER by defts. #1, 6, 7, and 9 to second amended complaint; c/m 2-24.

Feb 24 ANSWER by deft. #12 to second amended complaint; c/m 2-24.

Feb 25 ANSWER by deft. #14 to second amended complaint; c/m 2-24.

Mar 12 SUGGESTION of dismissal as to deft. Richard M. Nixon; c/m 3-12; P&A's; table of cases and authorities; attachments (5).

Mar 12 MOTION by deft. Richard Nixon for extension of time within which to answer or otherwise plead; P&A's; c/m 3-12.

Mar 19 ANSWER by John N. Mitchell, deft. #2, to second amended complaint; c/m 3-17.

Mar 19 STIPULATION extending time for deft. H.R. Haldeman to respond to pltfs. second amended complaint to and including 3-21-75. (N)Smith, J.

Mar 20 ORDER for extension of time for an additional 30 days up to and including April 11, 1975 within which deft. Richard M. Nixon may respond to pltfs. amended complaint. (N)Smith, J.

Mar 24 WITHDRAWAL of appearance of Henry E. Petersen, Edward S. Christenbury, Benjamin C. Flannagan and Jonathan B. Smith as counsel for deft. H.R. Haldeman and enter appearance of John J. Wilson and Frank H. Strickler as counsel for deft. CD/N

Mar 24 WITHDRAWAL of appearance of Henry E. Petersen, Edward S. Christenbury, and Jonathan B. Smith as counsel for deft. H.R. Haldeman; and enter appearance of John J. Wilson and Frank H. Strickler as counsel for deft. CD/N

Mar 24 ANSWER by deft. H.R. Haldeman to second amended complaint; c/m 3-21.

Apr 4 DEPOSITION of Horace R. Hampton for pltfs. published and filed.

Apr 10 ANSWER by deft. Robert Mardian to second amended complaint; c/m 4-8.

Apr 11 ANSWER by deft. Richard Nixon to second amended complaint; c/m 4-11. Appearance of William G. Hundley and Cary Mark Feldman as attorneys for deft.

Apr 18 DEPOSITION of Earl Connor for pltfs. published and filed.

Apr 23 NOTICE by pltfs. to take deposition of Cartha DeLoach; cc/4-22.

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| Apr | 30 | DEPOSITION of William Earl Fisher for pltfs. published and filed. |
| May | 5 | APPEARANCE of Hope Eastman as attorney for pltfs.; c/m 5-2. |
| May | 6 | CHANGE of address of movants. CD/N (unsigned) |
| May | 8 | NOTICE by pltfs. to take deposition of Robert C. Mardian. |
| May | 13 | MOTION by deft. Haldeman for leave to inspect and to copy logs of telephone conservations; memorandum of P&A's; c/m 5-12. |
| May | 15 | NOTICE by pltfs. of rescheduled deposition of Robert H. Hanes. |
| May | 16 | NOTICE by pltfs. of rescheduled deposition of William C. Sullivan. |
| May | 19 | NOTICE by pltfs. of rescheduled deposition of Cartha DeLoach. |
| May | 19 | NOTICE by pltfs. of rescheduled deposition of Richard M. Nixon. |
| May | 29 | NOTICE by pltfs. to take rescheduled deposition of Robert C. Mardian; c/m 5-27-75. |
| June | 2 | DEPOSITION of Ernest H. Belter for pltfs. published and filed; exhibit 1. |
| June | 3 | REQUEST by pltfs. for production of documents. |
| June | 11 | APPEARANCE of Robert M. Adler as attorney for deft. John Ehrlichman. CD/N |
| June | 12 | DEPOSITION of James J. Gaffney for pltfs. |
| June | 16 | NOTICE by pltfs. of continuance of deposition. |
| Jun | 18 | DEPOSITION of James D. Barnhardt for pltfs.; exhibit 1, published and filed. |
| Jun | 18 | DEPOSITION of Courtland J. Jones for pltfs.; exhibit 1 published and filed. |

Jun 18 FIRST set of interrogatories by deft. The Chesapeake and Potomac Telephone Co. to pltfs.; attachment; c/m 6-18.

Jun 23 MOTION by pltfs. for leave to file late in opposition to deft. Haldeman motion for leave to inspect and to copy logs of telephone conversations; c/m 6-13.

Jun 23 APPEARANCE of Lawrence H. Schwartz as attorney for deft. John Erlichman CD/N

** July 3 MOTION of deft. #2, Richard M. Nixon, for a protective order; memorandum of P&A's; exhibit A and B; c/m 7-3.

July 7 STIPULATION extending time for federal defts. to respond to pltfs. request for production of documents for an additional fifteen days up to and including 7-15-75. (FIAT) (N)Smith, J.

July 3 NOTICE by pltfs. to take deposition of William H. Quinlan, Jr.; attachment; c/m.

July 3 NOTICE by pltfs. to take deposition of Henry A. Kissinger; c/m.

July 3 NOTICE by pltfs. to take deposition of Jeanne W. Davis; attachments (2); c/m.

July 7 STIPULATION CONTINUING return date for subpoena duces tecum served upon Jeanne W. Davis and William H. Quinlan, Jr. for an additional eight days up to and including July 15, 1975. (FIAT) (N) Smith, J.

July 7 STIPULATION enlarging and extending time for pltfs. to respond to deft. Chesapeake and Potomac Telephone Company's interrogatories up to and including Sept. 16, 1975. (FIAT) (N) Smith, J.

July 8 MOTION by deft. Nixon to dismiss; c/m 7-8.

July 9 DEPOSITION of Alexander N. Haig for pltfs. filed and published; exhibits #1-24.

July 16 OBJECTION of Jeanne W. Davis to the inspection and copying of certain materials des-

ignated in the pltfs. subpoena duces tecum; c/s 7-1

July 16 OBJECTION of William H. Quinlan, Jr. to the inspection and copying of certain of the material designated in the pltfs. subpoena duces tecum; c/s 7-16.

July 16 RESPONSE of federal defts. to pltfs. request for production of documents; c/s 7-16.

July 18 MOTION of federal deft., Clarence M. Kelley, for an Order modifying this Court's Order of April 1, 1974 and supporting points and authorities; c/s 7-18.

July 21 WITHDRAW the appearance of John F. Dienelt as counsel for pltf. (fiat) Smith, J.

July 21 MOTION of William S. Frates, Esq. to withdraw appearance as counsel for deft., John Ehrlichman; c/m 7-9-75.

July 21 ORDER granting federal deft. Kelly's request for modification of Court Order entered April 1, 1974 permitting the deft. to make available to selected staff members of the Senate Select Committee at FBI all documents impounded by this Court pursuant to its Order of June 23, 1973 except for the logs of the conversations of the pltfs.; permit staff members to make notes of the contents of such documents for submission to the Select Committee. (N) Smith, J.

July 22 ORDER granting motion of William S. Frates, attorney, to withdraw his appearance as counsel for deft. John Ehrlichman. (N) Smith, J.

July 29 REQUEST by pltfs. for production of documents; c/m 7-25.

July 29 APPEARANCE of Richard E. Timbie as counsel for pltfs. CD/N

July 31 MOTION of pltfs. for an Order to permit public filing of their opposition to deft. Nixon's motion for a protective order; opposition of

pltfs. to motion of deft. Nixon for a protective order; table of authorities; exhibit A,B,C, and D; c/m 7-31.

Aug 4 STIPULATION that discovery of deft. Henry Kissinger will proceed initially by written interrogatories to be followed by deposition upon oral examination; deposition of said deft. now notice for Sept. 11, 1975 is continued until a mutually agreeable time and place. (FIAT)(N) Smith, J.

Aug 7 ORDER denying motion of deft. Haldeman for leave to inspect and copy certain logs of telephone conversations. (N) Smith, J.

Aug 15 DEPOSITION of Jeb Stuart Magruder for pltfs. published and filed.

Aug 19 RESPONSE by federal defts. to pltfs. second request for production of documents; affidavit of Hunter E. Helgeson; c/s 8-18.

Sept 9 ORDER modifying this Court's Order of April 1, 1974 to allow pltfs. to file their opposition to deft. Nixon's motion for a protective order be a matter of public record. (N) Smith, J.

Sept 10 NOTICE by federal defts. of submission of additional documents; c/s 9-10

Sept 17 STIPULATION extending time within which pltfs. may respond to deft. Chesapeake and Potomac Telephone Company's interrogatories up to and including September 19, 1975. (N) Smith, J.

Sept 22 ANSWERS by pltfs. to first set of interrogatories by deft. #12; c/m 9-19.

Sept 22 MOTION of deft., Richard M. Nixon, for a protective order (to quash taking of deposition) heard and taken under advisement. (Rep: D. Copeland) Smith, J.

Sept 24 MEMORANDUM AND ORDER denying deft., Richard M. Nixon's motion for protec-

tive order conditioned upon the deposition of Nixon taking place at a location at or near his home. (N) Smith, J.

Oct 3 DEPOSITION of Cartha D. DeLoach for the pltffs.

Oct 3 DEPOSITION of John N. Mitchell for the pltffs.

Oct 6 MOTION by deft. #2, Richard M. Nixon, for reconsideration of motion for a protective order; memorandum of P&A's; c/m 10-6.

Oct 7 APPEARANCE of Jerry J. Berman as attorney for pltfs. CD/N

Oct 7 FIRST set of interrogatories by federal defts. to pltfs.; c/s 10-7.

Oct 10 OPPOSITION by pltfs. to deft. Nixon's motion for reconsideration of this Court's Order denying motion for protective order; c/m 10-9.

Oct 10 FIRST set of interrogatories by pltfs. to deft. #1; c/s 10-10.

Oct 17 REPLY of deft. Nixon to pltfs. opposition to motion for reconsideration c/m 10-16.

** Oct 28 MOTION of deft. Clarence M. Kelley for an order modifying this court's order of 4-1-74 and supporting points and authorities; c/s 10-28-75.

Oct 31 STIPULATION extending time until 10-31-75 for the pltfs. to submit the answers to C&P's first six questions of the first set of interrogatories and extending time to 12-31-75 for pltfs. to file a motion for summary judgment for the remaining questions. (N)(FIAT)Smith, J.

* Oct 29 ORDER denying motion of deft. Nixon for reconsideration. (N) Smith, J.

Oct 29 ORDER modifying Court's Order entered April 1, 1974 to permit deft. to make available to selected staff members of the House Select Committee at the offices of the FBI, all of the

documents impounded by this Court pursuant to Order of June 28, 1973, except for the logs of the conversations of the pltfs. and to permit staff members to make notes of the contents of such documents for submissions to the members of the Select Committee. (N) Smith, J.

Nov 7 STIPULATION extending time to and including 12-10-75 for federal deft. Henry A. Kissinger, to respond to the pltfs. interrogatories. (N)(FIAT) Smith, J.

Nov 12 STIPULATION extending time to and including 12-8-75 for pltfs. to respond to the federal defts. first set of interrogatories. (N)(FIAT) Smith, J.

Dec 1 DEPOSITION of John Ehrlichman for pltfs. published and filed; exhibits exhibit 1,2.

Dec 5 NOTICE by pltfs. to take deposition of Richard M. Nixon; c/s 11-26.

Dec 8 ANSWERS by pltfs. to federal defts. first set of interrogatories; c/s 12-8.

Dec 9 MOTION by federal deft., Henry A. Kissinger, for extension of time; memorandum of P&A's; c/s 12-9.

Dec. 10 ORDER granting federal deft. Kissinger's motion for extension of time within which to respond to pltfs. interrogatories extension to and including 1/10/76. (N) Smith, J.

Dec. 19 NOTICE by pltf. to take deposition of Richard M. Nixon rescheduled for January 15 and 16, 1976; c/m 12-17-75.

Dec 22 WITHDRAWAL of Walter Hellerstein as attorney for deft. #15. (FIAT) CD/N Smith, J.

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Jan 2 APPEARANCE of Homer E. Moyer, Jr. as attorney for deft. #15. CD/N

Jan 5 NOTICE by pltfs. to take deposition of H.R. Haldeman; c/s 1-2.

Jan 7 APPEARANCE of Mark D. Rosenbaum of ACLU Foundation of Southern California as local counsel for pltfs. in the Central District of California; c/m 12-22. (FIAT) Smith, J.

Jan 12 RESPONSES by federal deft., Kissinger, to pltfs. first set of interrogatories; c/s 1-12.

Jan 22 MOTION by federal defts. to compel answers to interrogatories; memorandum of P&A's; table of cases and authorities; c/m 1-22.

Feb 11 NOTICE by pltfs. to take deposition of Henry A. Kissinger; c/m 2-11.

Feb 12 SUPPLEMENTAL memorandum by pltfs. in support of motion to enforce subpoena duces tecum; c/m 2-11.

Feb 12 REQUEST by pltfs. pursuant to Rule 34, FRCP, and the Court's Order of April 1, 1974 for production of additional documents; c/m 2-11.

Feb 17 APPEARANCE of Edward S. Christenbury and Elizabeth Gere Whitaker as attorneys for defts. Richard M. Nixon, John N. Mitchell, H.R. Haldeman, and Robert C. Mardian. CD/N

Feb 18 SECOND set of interrogatories to pltfs. by federal defts.; c/m 2-18.

Feb 18 REQUESTS for admissions by federal defts.; c/m 2-18.

Feb 20 STIPULATION for extension of time within which pltfs. may answer the federal defts. motion to compel answers to interrogatories is extended pending negotiations concerning additional answers. Federal defts. may terminate this extension at any time on 10 days notice, approved. (N) Smith, J.

Mar 10 NOTICE by federal defts. except Ehrlichman of in camera filing of deposition of Richard M.

Nixon submitted to the Court *in camera* with the exception of page 45 (line 28 beginning "It . . .), pages 46–49 and page 50 (through line 7, ending ". . . no initiative") submitted in sealed form.

Mar 10 DEPOSITION of Richard M. Nixon taken on behalf of pltfs. taken on 1-15-76.

Mar 10 DEPOSITION of H.R. Haldeman taken on behalf of pltfs. taken on 1-16-76.

Mar 12 RESPONSE by federal defts. to pltfs. request for additional production of documents; c/m 3-12.

Mar 19 OPPOSITION of Philip W. Buchen to pltfs. supplemental memorandum in support of motion to enforce subpoena duces tecum; corrections to affidavit of Mary M. Filippini; affidavit of Mary M. Filippini; exhibit A; exhibit B; affidavit of Barry N. Roth; exhibit A; exhibit B; c/m 3-19.

Mar 24 APPEARANCE of David C. Acheson for all defts. except C&P Telephone Co.; c/m 3-24.

Mar 26 SUPPLEMENTAL notice by pltfs. to take deposition of Henry A. Kissinger; c/s 3-25.

Mar 26 ANSWERS by pltfs. to federal defts. second set of interrogatories; c/s 3-25.

Apr 23 WITHDRAWAL of Homer E. Moyer, Jr. as attorney for deft. #15. CD/N

Apr 27 STIPULATION granting counsel to review the deposition of Secretary of State, Henry A. Kissinger, approved. (N) Smith, J.

Apr 27 RESPONSE by pltfs. to federal defts. request for admissions; c/s 4-28.

May 11 APPEARANCE of James J. Bierbower as counsel for Jeb Stuart Magruder; c/m 5-10.

May 11 REQUEST by federal defts. except Ehrlichman that pursuant to paragraph 9 of Court's Order of 4-1-76 Monroe Leigh, Legal

Advisor, State Department and Michael Sandler, attorney, Office of Legal Advisor, State Department shall have access to documents except the logs to assist in preparation of the above litigation. "Let this be filed". c/m 5-7 Smith, J.

May 12 APPEARANCE of Togo D. West, Jr. as counsel for deft. The Chesapeake and Potomac Telephone Company.

May 18 FURTHER responses by pltfs. to federal defts. first set of interrogatories c/m 5-14. "Let this be filed". Smith, J.

May 21 MOTION by federal deft., Clarence M. Kelley, to classify/reclassify certain documents impounded by the Court; memorandum of P&A's; c/m 5-21.

May 21 NOTICE by federal defts. except Ehrlichman of in camera filing of the transcript of testimony of Dr. Henry A. Kissinger with page 33 submitted to the Court *in camera* in sealed form; c/m 5-21.

May 21 DEPOSITION of Henry A. Kissinger for pltfs. taken on March 30, 1976.

May 26 NOTICE by federal defts. except Ehrlichman of in camera filing of exhibits to the depositions of Richard M. Nixon and H.R. Haldeman; c/m 5-26.

May 27 NOTICE by federal defts. except Ehrlichman to take deposition of Ina Halperin; c/m 5-27.

May 27 RENEWED motion by federal defts. to compel answer to interrogatories; memorandum of P&As; c/m 5-27.

May 28 APPEARANCE OF R. Joseph Sher as counsel for the Federal Defendants John Ehrlichman.

June 4 OPPOSITION by pltfs. to federal defts. renewed motion to compel answer to interrogatories; c/m 6-3.

June 10 ORDER filed 6-8-76 allowing an agent of the FBI in the presence of a designated Court employee, classify or reclassify documents listed in federal deft. Kelley's motion impounded the Court. Smith, J.

June 11 CORRECTION of pltfs. further responses to federal defts. first set of interrogatories; c/m 6-11.

June 11 RESPONSES by pltfs. to federal defts. supplemental questions on first set of interrogatories; c/m 6-11.

June 15 MOTION by deft. #4 for summary judgment; memorandum of P&A's; statement; c/m 6-15. Appearance of Lawrence H. Schwartz.

June 18 APPEARANCE of Larry L. Gregg as counsel for federal defts. except Ehrlichman; c/m 6-18.

Jun 21 SIGNATURE of Morton H. Halperin to pltfs. responses to federal defts. supplemental questions on first set of interrogatories; c/m 6-21.

Jun 25 MOTION by federal defts. to extend discovery; memorandum of P&A's; c/m 6-25.

Jun 28 MEMORANDUM by pltfs. in opposition to federal defts. motion to extend discovery; c/m 6-23.

Jun 29 MOTION by defts. to compel taken under advisement pending further efforts of counsel and further hearing July 27, 1976 for cross-motions for summary judgment to go forward as set. (Rep: D. Copeland) Smith, J.

June 30 STIPULATION that pltfs. subpoena duces tecum served on Philip W. Buchen on 12-3-74 insofar as it seeks certain documents from among the presidential materials of the Nixon Administration and motions relating to quashing and enforcement thereof shall be deemed withdrawn upon completion of terms and conditions which have been agreed to by the parties to this stipulation for the purpose

of satisfying pltfs. request for discovery of relevant items from among said materials, approved. (N) Smith, J.

Jul 1 SUPPLEMENTAL memorandum in support of federal deft. Nixon's motion to dismiss; exhibit A; c/m 7-1.

Jul 2 STIPULATION allowing the respective representatives of the National Sec. Council and the Dept. of Defense provide counsel for the federal defts. and their clients copies of the documents so transferred to the extent permitted by pertinent security regulations. No document transferred shall be removed from the Archives. (N) Bryant, J.

July 8 DEPOSITION of Morton H. Halperin for federal defts.; Appendix; exhibit 1; exhibit 2; exhibit 3; exhibit 4; exhibit 5 and exhibit 6.

July 9 STIPULATION that the memoranda of points and authorities in support of motions for summary judgment shall not exceed 100 pages; federal defts. shall be permitted to file their memorandum of points and authorities in support of summary judgment on "8½ × 11" paper. (FIAT) (N) (c/m 7-8-76) Gesell, J.

July 9 MOTION by federal defts. for summary judgment; statement; memorandum of P&A's; exhibits to federal defts. motion for summary judgment; exhibit 1; exhibit 2; exhibit 3; exhibit 4; exhibit 5; exhibit 6; exhibit 7; exhibit 8; exhibit 9; exhibit 10; exhibit 11; attachment 1; exhibit 12; exhibit 13; exhibit 14; exhibit 15; exhibit 16; exhibit 17; exhibit 18; exhibit 19; exhibit 20; exhibit 21; exhibit 22; exhibit 23; exhibit 23; c/m 7-9.

July 9 MOTION by pltfs. for an Order to permit public filing of their motion for summary judgment against the individual defts.; exhibit; memorandum of law; table of contents; table of cases

and authorities; memorandum of law; statement of material facts; c/m 7-9.

July 12 MOTION by pltfs. for summary judgment against deft. #12; memorandum; statement; c/m 7-12.

July 12 MOTION by deft. #12 for summary judgment; memorandum; table of contents; table of citations; exhibit A; statement; c/m 7-12.

July 14 ORDER filed 7-12-76 amending Court's Order dated April 1, 1976 permitted pltfs. motion for summary judgment against individual defts. be filed as a matter of public record. (N) Smith, J.

July 13 MOTION by pltfs. for summary judgment against individual defts.; memorandum of law; table of contents; table of cases and authorities; statement; c/m 7-9.

July 12 STIPULATION allowing copy of transcript be treated as the deposition of Mr. Sullivan and FURTHER agreed that Mr. Sullivan at any time prior to the trial make such formal corrections, NOT CHANGING THE SUBSTANCE OF THE DEPOSITION TESTIMONY AS HE MAY DESIRE. (FIAT)(N). Smith, J.

July 13 COPY of deposition of William G. Sullivan.

July 19 RESPONSE by Federal defts. to statement of material facts by pltfs.; c/s 7-19-76.

July 19 MOTION of Federal defts. for an order to permit public filing of opposition to motion by pltfs. for summary judgment; c/s 7-19-76.

July 19 MEMORNADUM by pltfs. of Points and Authorities in opposition to motion by deft. Ehrlichman for summary judgment; Statement of genuine issues; c/m 7-19-76.

July 19 MEMORANDUM of Law by pltfs. in opposition to suggestion for dismissal as to Richard Nixon and in opposition to motion of Richard Nixon to dismiss; Exhibit A; c/m 7-19-76.

July 19 MOTION by Federal defts. for leave to file an opposition to motion by pltfs. for summary judgment in excess of 35 pages; c/s 7-19-76.

July 19 MOTION by pltfs. for an order to permit public filing of Memorandum in opposition to Federal defts. motion for summary judgment; c/m 7-19-76.

July 19 MEMORANDUM by pltfs. of Points and Authorities in opposition to motion by Federal defts. for summary judgment; Table of Contents; Table of Cases; Exhibit 1 w/Exhibits A thru M; Exhibits 2 & 3; Affidavit of Morton H. Halperin; c/m 7-19-76. (fiat) SMITH, J.

July 20 ORDER modifying Court's order dated April 1, 1974 permitting pltfs. Memorandum of Points and Authorities and attachments in opposition to Federal defts. Motion for summary judgment be filed as a matter of public record. (fiat)(N) SMITH, J.

July 19 STATEMENT by pltfs. of genuine issues in response to Federal Defts. Statement of material facts; c/m 7-19-76.

July 19 MEMORANDUM by deft. The Chesapeake and Potomac Telephone Company in opposition to motion by pltfs. for summary judgment; Appendices I & II; Exhibits 1 & 2; c/m 7-19-76.

July 19 RESPONSE by deft. The Chesapeake and Potomac Telephone Company to Statement of material facts by pltfs.; c/m 7-19-76.

July 20 ORDER granting federal defts. motion for leave to file an opposition in excess 35 pages. (N) Smith, J.

July 20 OPPOSITION by federal defts. to pltfs. motion for summary judgment; table of contents; table of cases and authorities.

Jul 20 MEMORANDUM by pltfs. in opposition to deft. #12's motion for summary judgment; statement; c/m 7-19.

July 23 REPLY by federal deft. Nixon to pltfs. opposition to suggestion for dismissal as to deft. and in opposition to motion of deft. to dismiss; c/m 7-23.

July 23 REPLY by federal defts. to pltfs. opposition to motion for summary judgment; table of contents; table of cases; exhibit A; c/m 7-23.

July 23 REPLY by pltfs. to federal defts. opposition to motion for summary judgment against individual defts.; c/m 7-23.

July 23 STATEMENT by pltfs. with respect to motion of federal defts. for an order to permit public filing of their opposition to pltfs. motion for summary judgment; c/m 7-23.

July 26 REPLY memorandum by deft. #12; Appendix I; c/m 7-26.

July 26 REPLY by deft. #4 to pltfs. opposition to motion for summary judgment; c/s 7-26.

July 27 CROSS-MOTIONS for summary judgment argued and taken under advisement. (Rep: R. Weber) Smith, J.

Aug 3 MEMORANDUM by pltfs. in response to reply to pltfs. opposition to John D. Ehrlichman's motion for summary judgment; exhibits 1-5; c/m 8-3.

Sept 9 APPEARANCES of Robert L. Keuch, George W. Calhoun, Edward S. Christenbury, Larry L. Gregg and Elizabeth G. Whitaker as counsel for the deft. #4 John Ehrlichman; c/m 8/30/76.

Nov 17 APPEARANCE of D. Jeffrey Hirschberg as attorney for federal defts.; c/m 11-17-76.

Dec 16 OPINION. (N) SMITH, J.

**1977**

Jan 7 STIPULATION within which the parties may submit proposed orders implementing the

Court's opinion of Dec. 6, 1976 extended to January 14, 1977, approved. (N) Smith, J.

Jan 13 NOTICE by pltfs. of change of address of attorney; c/m 1-12-77.

Jan 31 ORDER filed 1-28-77 Richard M. Nixon's motion to dismiss and granting defts. Henry A. Kissinger, John Ehrlichman, Alexander Haig, William Sullivan, Clarence Kelley and Robert C. Mardian summary judgment as to all claims; C&P Telephone Company's motion for summary judgment granted; second amended complaint as to deft. Jeb S. Magruder dismissed with prejudice; defts. Nixon, Mitchell and Haldeman granting summary judgment for compensatory damages for violation of their Fourth Amendment rights and counsel to report to the Court at 10:00 a.m. on March 15, 1977. (See Order for further detail.) (N)Smith, J.

Feb 8 WITHDRAWAL of appearance of Elizabeth G. Whitaker as counsel for federal defts. CD/N c/m 2-8-77.

Feb 8 APPEARANCE OF LUBOMYR M. JACHNYCKY as counsel for the federal defts.; x/m 2-7-77. CD/N

Feb 9 MOTION by pltfs. to amend judgment; c/m 2-8-77.

Feb 23 WITHDRAWAL of appearance of Walter Slocombe as counsel for pltfs. CD/N

Mar 15 STATUS CALL. Pltf. will submit brief as to damages and question of injunctive and declaratory relief; defts. given until 4-13-77 to respond. (Rep: D. Copeland) Smith, J.

Mar 15 REPORT to the Court by pltfs. and preliminary memorandum in support of declaratory and injunctive relief; c/s 3-15-77.

Mar 16 APPEARANCE of George W. Calhoun for defts; c/m 3-11-77.

Mar 16 TRANSCRIPT OF PROCEEDINGS, 7-27-76; courts copy; pages 1-97; (Rep: R. Weber).

Mar 21 WITHDRAWAL of appearance of David E. McGiffert as counsel for deft. #1 and enter the appearance of Michael Boudin; c/m 3-10-77. CD/N

Mar 30 POST-JUDGMENT memorandum by pltfs. in support of compensatory and punitive damages; c/m 3-30-77.

Apr 4 WITHDRAWAL of Togo D. West as attorney for deft. #15 and enter appearance of Donna M. Murasky; c/m 4-4-77. CD/N

Apr 8 APPEARANCE of Mark H. Lynch as attorney for pltfs. CD/N

Apr 12 MEMORANDUM of deft. #12 in response to pltfs. memoranda respecting relief; c/m 4-12-77. Appearance of Michael Boudin.

Apr 13 MEMORANDUM of federal defts. on damages and equitable relief; c/m 4-13-77.

Apr 22 STIPULATION for extension of time within which the pltfs. reply to federal defts. memorandum on damages and injunctive relief be extended to May 4, 1977. (FIAT)(N) Smith, J.

May 4 REPLY by pltfs. to federal defts. memorandum on damages and equitable relief; c/m 5-4-77.

May 6 WITHDRAWAL of appearance on Donna M. Murasky as counsel for deft. #15 C&P Telephone Co.; c/m 5-6-77.

May 24 CHANGE of address of Mark H. Lynch, attorney for pltf. CD/N

May 26 SUPPLEMENTAL report by pltfs. to the Court on declaratory and injunctive relief; c/s 5-25-77.

Aug 5 MEMORANDUM OPINION AND ORDER that defts. Nixon, Haldeman and Mitchell are liable jointly and severally to each of the pltfs. for nominal damages in the amount of One Dollar ($1.00) and further all defts. are permanently enjoined from making any use or disclosure of the intercepted wire communications of the pltfs. (See order for further details.)(N) Smith, J.

Aug 9 MOTION of deft. #9 for an order modifying this Court's order of Aug. 5, 1977; memorandum; attachments (3); c/m 8-9-77.

Sept 6 NOTICE of appeal by pltfs. from Judgments of 5-5-77 and 1-28-77. $5.00 paid and credited to U.S. Copies mailed to Jonathan B. Smith, Benjamin Flannagan, Edward S. Christenbury, D. Jeffrey Hirschberg, James Bierbower, and Michael Boudin.

Oct 3 NOTICE of appeal by federal defts. Nixon, Mitchell, and Haldeman from judgments of 1-28-77 and 8-5-77. Copies mailed to Joseph E. Case, Michael Boudin, and John H.F. Shattuck. Govt. no fee. Copy mail also to James Bierbower and Lawrence H. Schwartz.

Nov 14 RECORD on appeal delivered to USCA; receipt acknowledged. (77-2014 and 77-2015)

Dec 8 ORDER filed on 12-7-77 modifying this Court's order entered August 5, 1977 allowing federal deft. Kelley to copy each of the specific documents to be released to Ellsberg. (See order for details. (N) Smith, J.

Dec 15 RESPONSE of pltfs. to Court's order of 10-7-77; c/m 12-15-77.

Dec 21 STIPULATION amending notices of appeal filed by the pltfs. 9-6-77 by federal defts., Nixon, Mitchell & Haldeman on Oct 3, 1977 from judgments entered on Jan 28, 1977 and Aug 5, 1977 to include the final judgment sub-

sequently entered and said notices shall apply to the final judgment with the same force and effect as they applied to the judgments of Jan 28, 1977 and Aug 5, 1977 otherwise said notices of appeal remain in effect. (fiat) (N) SMITH, J.

Dec 27 FINAL JUDGMENT filed on 12-21-77 denying motion of deft. Richard M. Nixon to dismiss; granting summary judgment as to all claims as to defts, Henry A. Kissinger, John Enrlichman, Alexander Haig, William Sullivan, Clarence Kelley and Robert C. Mardian; granting motion of deft. Chesapeake & Potomac Telephone Co. for summary judgment; denying motion of pltfs. for summary judgment as to deft. Potomac Telephone Co. and dismissing with prejudice second amended complaint as to said deft.; dismissing second amended complaint with prejudice as to deft. Jeb S. Magruder; granting summary judgment as to defts. Richard M. Nixon, John N. Mitchell and H.R. Haldeman as to pltfs. claim for relief under 18 USC 2502: granting pltfs. summary judgment for violation of their 4th amendment rights from defts. Richard M. Nixon, John N. Mitchell, and H.R. Haldeman: defts. Nixon, Haldeman and Mitchell are liable, jointly and severally, to each of the pltfs. for nominal damages in the amount of One Dollar ($1.00) and dissolving Court's April 1, 1974 protective order. (See order for further details.)(Signed 12-20-77)(N)

Smith, J.

Dec 27 MEMORANDUM filed on 12-21-77. (N)(FIAT) Smith,

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

**SECOND AMENDED COMPLAINT**

MORTON H. HALPERIN and INA HALPERIN, 8215 Stone Trail Drive, Bethesda, Maryland, suing individually and on behalf of their minor children, DAVID HALPERIN, MARK HALPERIN and GARY HALPERIN,

Plaintiffs,

*v.*

HENRY A. KISSINGER,
2527 Waterside Drive, NW
Washington, D.C.

RICHARD M. NIXON,
Presidential Compound
San Clemente, California

JOHN N. MITCHELL
1030 Fifth Avenue
New York, New York

H. R. HALDEMAN
2402 R Street, NW
Washington, D.C.

JOHN EHRLICHMAN
330 Chesapeake Drive
Great Falls, Virginia

ALEXANDER HAIG
Fort McNair
Washington, D.C.

WILLIAM C. SULLIVAN
2810 64th Avenue
Cheverly, Maryland

ROBERT C. MARDIAN
2323 North Central Avenue
Phoenix, Arizona

CLARENCE KELLEY
Director of the FBI
10th and Pennsylvania Avenue
Washington, D.C.

JEB STUART MAGRUDER
Federal Penitentiary
Allenwood, Pennsylvania

JOHN DOE, RICHARD ROE, and
other unknown agents of the
FBI and

JAMES POE, RICHARD DOE,
and other unknown employees
of the Executive Department
and other agencies of government

CHESAPEAKE AND POTOMAC TELEPHONE CO.
725-13th Street, NW
Washington, D.C.

Defendants.

**JURISDICTION**

1. This action arises under Title 18, United States Code, § 2520 and under the First, Fourth and Ninth Amendments to the United States Constitution. The jurisdiction of this Court is based upon Title 28, United States Code, § 1331(a) and 1343(4), Title 18, United States Code § 2520, and the First, Fourth and Ninth Amendments to the Constitution. The matter in controversy, exclusive of interests and costs, exceeds $10,000.

**PARTIES**

2. Plaintiff MORTON H. HALPERIN is a citizen of the United States and a resident of the State of Maryland. He is a Senior Fellow at the Brookings Institution, Washington, D.C. From January 21, 1969 through September 19, 1969, he was Assistant to the defendant KISSINGER; and from August 1967 through January 1969 he was Deputy

Assistant Secretary of Defense for Policy Planning and Arms Control.

3. Plaintiff INA HALPERIN is a citizen of the United States and a resident of the State of Maryland. She resides with her husband, plaintiff MORTON HALPERIN.

4. Plaintiffs DAVID, MARK and GARY HALPERIN are minors and citizens of the United States, residing with their parents, plaintiffs MORTON and INA HALPERIN.

5. Defendant HENRY A. KISSINGER is Secretary of State and at the time this action was initiated was Assistant to the President of the United States for National Security Affairs, residing at 2527 Waterside Drive, NW, Washington, D.C. and working at the White House, 1600 Pennsylvania Avenue, Washington, D.C. He is sued in his individual and official capacities.

6. Defendant RICHARD M. NIXON is former President of the United States, presently residing at "Casa Pacifica", San Clemente, California. He is sued in his individual capacity.

7. Defendant JOHN N. MITCHELL is former Attorney General of the United States who at the time this action was initiated resided at 1030 Fifth Avenue, New York, New York. He is sued in his individual and former official capacities.

8. Defendant H. R. HALDEMAN is former Assistant to the President of the United States, residing at the time this action was initiated at 2402 R Street, NW, Washington, D.C. He is sued in his individual and former official capacities.

9. Defendant JOHN EHRLICHMAN is former Counsel to the President and former Assistant to the President of the United States for Domestic Affairs, residing at the time this action was initiated at 330 Chesapeake Drive, Great Falls, Virginia. He is sued in his individual and former official capacities.

10. Defendant ALEXANDER HAIG is Assistant to the President of the United States, formerly Deputy Assistant to the President of the United States for National Security

Affairs, and formerly Military Assistant to the defendant KISSINGER, residing at the time this action was initiated at Fort McNair, Washington, D.C. He is sued in his individual and official capacities.

11. WILLIAM C. SULLIVAN is former Director of the Office of National Narcotics Intelligence, Justice Department, and formerly assistant to the late Director of the Federal Bureau of Investigation, J. Edgar Hoover. At the time this action was initiated, he resided at 2810-64th Avenue, Cheverly, Maryland. He is sued in his individual and former official capacities.

12. Defendant ROBERT C. MARDIAN is a former Assistant Attorney General of the United States and a former official of the Committee to Re-elect the President, residing at 2323 North Central Avenue, Phoenix, Arizona. He is sued in his individual and former official capacities.

13. CLARENCE M. KELLEY is Director of the Federal Bureau of Investigation. He is sued in his official capacity as custodian of certain records hereinafter described.

14. Defendant JEB STUART MAGRUDER, is a former Special Assistant to the President and is currently serving a prison term in the Federal Penitentiary at Allenwood, Pennsylvania. He is sued in his individual and former official capacities.

15. Defendants JOHN DOE and RICHARD ROE are unknown agents of the Federal Bureau of Investigation. They are sued in their individual and official capacities.

16. Defendants JAMES POE and RICHARD DOE are unknown agents of the Executive Department or of other governmental agencies. They are sued in their individual and official capacities.

17. Defendant CHESAPEAKE AND POTOMAC TELEPHONE CO. is a District of Columbia corporation with its principal place of business at 725-13th Street, NW, Washington, D.C. It is a public utility providing telephone service for residents in the greater Washington area, including the plaintiffs.

**FACTS**

18. Upon information and belief, sometime in April, 1969, in Washington, D.C., defendants KISSINGER, NIXON, and HALDEMAN and the late J. Edgar Hoover, former Director of the Federal Bureau of Investigation, decided and agreed to conduct electronic surveillance of certain persons, including employees of the National Security Council, including plaintiff MORTON H. HALPERIN without securing any form of prior judicial approval. Defendant NIXON has subsequently stated that such decision and agreement were made, and subsequent actions taken, at his personal direction.

19. Thereafter, upon information and belief, defendant KISSINGER had a conversation with the late FBI Director J. Edgar Hoover in Washington, D.C., and at that time or subsequently directed and procured him to have FBI or other government agents install electronic surveillance devices on plaintiff MORTON HALPERIN's home telephone.

20. Upon information and belief, sometime in the month of May, 1969, in Washington, D.C., defendant MITCHELL, acting in concert with defendants HALDEMAN, EHRLICHMAN, NIXON, KISSINGER and HAIG, under color of his authority as Attorney General of the United States, and without application for or issuance of a judicial order or warrant, or other valid authoritization, directed and procured Mr. Hoover and other persons employed by the FBI or by other governmental agencies, to install an electronic, mechanical or other device at the private residence telephone of the plaintiffs at 8215 Stone Trail Drive, Bethesda, Maryland, for the purpose of intercepting the wire communications of plaintiff MORTON HALPERIN.

21. Upon information and belief, such a device was or devices are thereafter installed upon the home telephone of the plaintiffs by defendants JOHN DOE, RICHARD ROE, and other known and unknown agents of the Federal Bureau of Investigation and/or by JAMES POE, RICHARD DOE and other unknown agents of the Executive Department or other governmental agencies, acting at

the direction and procurement of defendants KISSINGER, NIXON, HAIG, MITCHELL, HALDEMAN and EHRLICHMAN.

22. Such a device was installed on the home telephone of plaintiffs on May 9, 1969, three days before any written authorization is claimed to have been secured from defendant MITCHELL or any authorized official of the Justice Department or other office of the Federal Government. Such installation, without any written authorization of the Attorney General was in violation of the governing rules and regulations of the Justice Department and the FBI.

23. Upon information and belief, defendant CHESAPEAKE AND POTOMAC TELEPHONE CO. assisted in the installation of such devices and participated in the interception of plaintiffs' telephone conversations.

24. Upon information and belief, the defendants named in paragraphs 21 and 23 above kept the said devices in place for a period of twenty-one months or more after its installation.

25. In September 1969, shortly after defendant KISSINGER accepted plaintiff MORTON H. HALPERIN's resignation from the National Security Council staff, defendant KISSINGER ordered that the Halperin tap continue at the same time that he consented to the termination of other taps instituted at his request.

26. During the course of this surveillance the defendants named above intercepted numerous conversations to which each of the plaintiffs were parties. Disclosure of such interceptions was procured by defendants NIXON, KISSINGER, HAIG, HALDEMAN and EHRLICHMAN by means of a request to the late J. Edgar Hoover and defendant SULLIVAN that summaries of these conversations be prepared and transmitted to them.

27. On a regular basis during the course of this illegal interception of plaintiffs' private telephone conversations, defendant SULLIVAN disclosed such conversations by preparing or causing to be prepared such summaries and transmitting them to the defendants NIXON, KIS-

SINGER, HAIG, HALDEMAN, and EHRLICHMAN for their examination and use.

28. On or about May 13, 1970, defendants NIXON and HALDEMAN met with the late FBI Director, J. Edgar Hoover, whereupon defendant NIXON specifically instructed Mr. Hoover to send all future summaries of plaintiffs' private telephone conversations to defendant HALDEMAN alone, which Mr. Hoover and his subordinates, including defendant SULLIVAN, thereafter did.

29. Sometime in the month of July, 1971, in San Clemente, California, defendant NIXON, in the presence of defendant EHRLICHMAN, personally instructed defendant MARDIAN physically to remove from the Federal Bureau of Investigation all documents, tapes, summaries, and other records pertaining to the defendants' electronic surveillance of the plaintiffs and certain other persons, and to deliver such records to the White House.

30. Following his meeting with defendant NIXON as set forth in the preceding paragraph, defendant MARDIAN, with the assistance of defendant SULLIVAN, physically removed from the Federal Bureau of Investigation all records pertaining to the defendants' electronic surveillance of the plaintiffs and certain other persons and delivered such records to the Oval Office of the White House for the purpose of their fraudulent concealment, following which, at the direction of defendant NIXON, the records were secreted in a safe in the White House office of defendant EHRLICHMAN, where they remained fraudulently concealed from July 1971 until May 1973.

31. On information and belief, the purpose of the concealment of the surveillance records by defendants MARDIAN, EHRLICHMAN and SULLIVAN, acting on personal instructions of defendant NIXON, as alleged in the preceding paragraphs, was to prevent appropriate discovery by the defense in *United States* v. *Ellsberg and Russo*, No. 9373 (WMB) - CD (C.D. Cal.) of the interception of conversations of the defendant in that case, Daniel Ellsberg, and his consultant, plaintiff MORTON H. HALPERIN, on the Halperins' home telephone.

31a. Defendant NIXON, acting direclty and through his agents, made continuing efforts from July 1971 to May 1973 to prevent disclosure of the existence of and records pertaining to the wiretap on plaintiffs' home telephone by deceiving attorneys in the Department of Justice and the Acting Director of the Federal Bureau of Investigation, and procuring false testimony from them denying the existence of the wiretaps in response to judicial and congressional inquiries.

32. The existence of an electronic surveillance device on a telephone at their residence first became known to the plaintiffs on May 10, 1973, when the trial judge in *United States* v. *Ellsberg and Russo, supra*, ordered the release of a memorandum filed with the court on May 9, 1973, by William D. Ruckelshaus, Acting Director of the Federal Bureau of Investigation. The memorandum stated in pertinent part:

> A preliminary report which I received last night indicates that an F.B.I. employee recalls that in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence. It is this employee's recollection that the surveillance was of Dr. Halperin, and that Mr. Ellsberg was then a guest of Dr. Halperin.
>
> I have no information concerning the substance of the conversation, nor has the investigation to date been able to find any record of such a conversation. The investigation, of course, is not complete, and further facts bearing upon the wiretaps may be uncovered.

33. Subsequently, acting F.B.I. Director Ruckelshaus recovered the missing surveillance records from a safe in the White House office of defendant EHRLICHMAN and returned them to the Federal Bureau of Investigation.

34. On July 24, 1974, defendant NIXON, in a letter to the Chairman of the Senate Foreign Relations Committee, described his role in the wiretapping of plaintiffs as follows:

> Where supporting evidence was available I personally directed the surveillance, including wiretapping, of certain specific individuals. I am familiar with the

testimony of Secretary Kissinger before your Committee to the effect that he performed the function, at my request, of furnishing information about individuals within investigative categories that I established so that an appropriate and effective investigation could be conducted in each case. This testimony is entirely correct, and I wish to affirm categorically that Secretary Kissinger and others involved in various aspects of the investigation were operating under my specific authority and were carrying out my express orders.

35. From May 1969 until September 19, 1969, while plaintiff MORTON HALPERIN was serving as Assistant to defendant KISSINGER, he and plaintiff INA HALPERIN frequently communicated their political and other views privately and frankly in telephone conversations with their close friends. On information and belief these conversations were recorded and summarized in regular reports to the defendants KISSINGER, NIXON, HAIG, HALDEMAN and EHRLICHMAN, based on the continuous electronic surveillance of plaintiffs' telephone during the period in question.

36. On information and belief, the defendants' illegal interception, disclosure and use of conversations on the private telephone in plaintiffs' residence continued for a period of twenty-one months or more, after plaintiff MORTON HALPERIN had left the staff of the National Security Council. During this period plaintiff MORTON HALPERIN, no longer a government employee, frequently communicated by telephone with many persons, including high elected officials, who expressed their views of current government policies. Plaintiff MORTON HALPERIN also wrote many articles for newspapers and journals in this period and communicated by telephone with many individuals in the course of preparing these articles. All these communications were privately expressed but, on information and belief, were intercepted under the direction of defendant SULLIVAN, and disclosed and used in regular reports to the defendants KISSINGER, NIXON, HAIG, HALDEMAN and EHRLICHMAN.

37. On one specific occasion plaintiff MORTON HALPERIN was in telephone contact with Leslie Gelb who was working on an article with former Secretary of Defense Clark Clifford relating to American policy in Vietnam. Plaintiff MORTON HALPERIN discussed with Mr. Gelb on his telephone an outline of points Clifford might make in such an article, and steps Clifford might take to insure a broad audience for his views. Upon learning of the interception of this conversation, defendant SULLIVAN transmitted information about the conversation to defendants KISSINGER, MITCHELL and NIXON, through J. Edgar Hoover. This information was subsequently received by defendants EHRLICHMAN and HALDEMAN who transmitted it to defendant MAGRUDER, who in turn transmitted it to Alexander Butterfield, then a deputy assistant to the President, early in January, 1970. HALDEMAN instructed defendant MAGRUDER, then a special assistant to the President, to work on planning answers to the criticisms of the Administration's Vietnam policy which the intercepted conversations revealed would be made in the Clifford article. In various communications in January, 1970, defendants MAGRUDER, HALDEMAN and EHRLICHMAN suggested various ways in which to answer the article once it appeared and to attempt to discredit its author. The activities described in this paragraph were in no way related to the defense of national security. They constituted illegal political intelligence gathering designed to counter constitutionally protected political criticism of administration policies.

38. On information and belief, the defendants' electronic surveillance of the plaintiff MORTON HALPERIN and his family was initiated, continued and concealed, by the defendants KISSINGER, NIXON, HAIG, EHRLICHMAN, HALDEMAN and MITCHELL in bad faith for the purpose and effect of monitoring the political ideas and associations of plaintiff MORTON HALPERIN during the period in question.

39. At no time did the plaintiffs, citizens of the United States, have any involvement with a foreign power, its agents or agencies.

40. After the fact of the wiretaps on plaintiff MORTON HALPERIN's home telephone was made a matter of public record, FBI agents questioned defendant HAIG concerning the basis of the wiretaps and the reasons, justifications and value of the taps. Defendant HAIG told said FBI agents that plaintiff MORTON HALPERIN was relieved of his responsibilities in the National Security Council as a result of his overheard telephone conversations. These statements were made by defendant HAIG in bad faith and for the purpose of injuring plaintiff MORTON HALPERIN and were false and were known to defendant HAIG to be false when he made them.

**CLAIMS**

41. The defendants' procurement of interception, disclosure and use, and their interception, disclosure and use of plaintiffs' telephone conversations during the period in question were unreasonable and illegal, and were not made in good faith reliance on any judicial, legislative or other valid authorization; and their disclosure and use of such communications were made with knowledge that the communications had been obtained by electronic surveillance of plaintiffs' telephone.

42. Defendants' procurement and interception, disclosure and use, and their interception, disclosure and use of the plaintiffs wire communications through electronic surveillance for a period of 8 to 25 months or more, was in violation of Title 18, United States Code, Sections 2511 and 2520.

43. Defendants' procurement of interception, disclosure and use, and their interception, disclosure and use of plaintiffs' telephone communications during the period in question, deprived plaintiffs of their rights of free speech and association under the First Amendment, and their right to privacy and security against unreasonable

searches and seizures guaranteed by the First, Fourth and Ninth Amendments.

WHEREFORE, plaintiffs pray that:

1. Each plaintiff have judgment against each defendant (except defendant KELLEY) in the sum of:

(a) $100.00 per day of procurement of interception, disclosure and use, and interception, disclosure and use, or $1,000.00, whichever is higher, as liquidated damages pursuant to Title 18, United States Code, § 2520.

(b) Such punitive damages as the court deems just under the circumstances.

2. Plaintiffs individually have judgment against each defendant (except defendant KELLEY) in a sum deemed just by the court for violation of their rights under the First, Fourth and Ninth Amendments.

3. Plaintiffs jointly have judgment against the defendants jointly for reasonable attorneys' fees and other costs reasonably incurred in connection with this action, pursuant to Title 18, United States Code, § 2520(c).

4. This court enjoin the defendants from any further procurement of interception, use and disclosure and any further interception, use and disclosure of plaintiffs' wire communications.

5. That defendant KELLEY be ordered to hand up to plaintiffs all records and logs relating to the electronic surveillance of plaintiffs.

6. This court declare the action of defendants as herein described in violation of Title 18, United States Code § 2511 and § 2520 and of the First, Fourth and Ninth Amendments to the Constitution.

7. This court require the FBI to correct the false statement contained in the interview report with defendant HAIG by noting that said statements were inconsistent with other documentation in its files relating to the wiretaps in question.

8. This court grant such other and further relief as to it may seem just and proper.

Respectfully submitted,

/s/ _____
MELVIN L. WULF
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*Attorneys for Plaintiffs*

SEPTEMBER 30, 1974

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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**ANSWER TO SECOND AMENDED COMPLAINT BY DEFENDANTS KISSINGER, HAIG, SULLIVAN AND KELLEY**

Come now defendants Kissinger, Haig, Sullivan and Kelley, hereafter the Federal defendants, by their undersigned attorneys, and in answer to the Second Amended Complaint filed herein, say:

**FIRST DEFENSE**

The national security electronic surveillance of the telephone installation of the plaintiffs, located at 8215 Stone Trail Drive, Bethesda, Maryland, referred to in the Second Amended Complaint, was authorized by the President of the United States, acting through the Attorney General, in the exercise of his authority relating to the Nation's foreign affairs, and was conducted for foreign policy purposes and was deemed necessary to protect national security information against foreign intelligence activities and as such was lawful and not violative of any provision of the Constitution of the United States or the provision of any Federal statute.

**SECOND DEFENSE**

The Court lacks jurisdiction over the subject matter of this action.

**THIRD DEFENSE**

At all times material herein, all activities of the aforesaid Federal defendants in the premises were performed in furtherance of their official duties, were within the scope of their authority, and were not in excess of their statutory authority. The aforesaid Federal defendants are, therefore, absolutely immune from civil liability therefore under the doctrine of official immunity.

**FOURTH DEFENSE**

The doctrine of soverign immunity bars any suit against the United States where the United States has not consented to be sued. This suit is barred by the doctrine of sovereign immunity since it is in law and fact a suit against the United States to which the United States has not consented.

**FIFTH DEFENSE**

At all times material herein, all activities of the aforesaid Federal defendants in the premises were performed in furtherance of their official duties, were undertaken in good faith and in the reasonable belief that such activities were necessary, lawful and within the scope of their authority. The aforesaid Federal defendants are, therefore, not liable to the plaintiffs in damages for such activity.

**SIXTH DEFENSE**

The Second Amended Complaint fails to state a claim upon which relief can be granted.

**SEVENTH DEFENSE**

The claim of the plaintiffs is barred by the Statute of Limitations.

**EIGHTH DEFENSE**

Answering specifically the allegations contained in the numbered paragraphs of the Second Amended Complaint, the Federal defendants aver:

1. The Federal defendants admit that the action purports to be as alleged in the first two sentences of paragraph 1 of the Second Amended Complaint, but deny that they have taken any action in violation of the plaintiffs' constitutional or statutory rights. The Federal defendants deny the allegations contained in the third sentence of paragraph 1 of the Second Amended Complaint.

2-4. The Federal defendants admit, on information and belief, the allegations contained in paragraph 2-4 of the Second Amended Complaint.

5. Federal defendant Kissinger admits, and on information and belief the remaining Federal defendants admit the allegations contained in paragraph 5 of the Second Amended Complaint and that the plaintiffs purport to sue defendant Kissinger individually and in his official capacity. Defendant Kissinger denies that any action has been taken by him against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

6-9. The Federal defendants admit, on information and belief, the allegations contained in paragraphs 6-9 of the Second Amended Complaint, and that the plaintiffs purport to sue each of those named defendants in his individual and former official capacities.

10. Federal defendant Haig denies, and on information and belief, the remaining Federal defendants deny, that defendant Haig is an Assistant to the President, but Federal defendant Haig admits, and on information and belief, the remaining Federal defendants admit, that defendant Haig was formerly Deputy Assistant to the President of the United States for National Security Affairs, and formerly Military Assistant to the defendant Kissinger, and was residing at the time this action was initiated at Fort

McNair, Washington, D.C., and that plaintiffs purport to sue defendant Haig in his individual and official capacities. Defendant Haig denies that any action has been taken by him against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

11. Federal defendant Sullivan admits, and on information and belief, the remaining Federal defendants admit that until his retirement on June 30, 1973, defendant Sullivan was the Director of the Office of National Narcotics Intelligence of the United States Department of Justice and that he formerly served as Assistant to the Director of the Federal Bureau of Investigation, and that the plaintiffs purport to sue him in his individual and former official capacities, but deny the remaining allegations contained in paragraph 11 of the Second Amended Complaint. Federal defendant Sullivan denies that any action has been taken by him against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

12. The Federal defendants admit, on information and belief, the allegations contained in paragraph 12 of the Second Amended Complaint, and that the plaintiffs purport to sue defendant Mardian in his individual and former official capacity.

13. Federal defendant Kelley admits, and on information and belief the remaining Federal defendants admit the allegations contained in paragraph 13 of the Second Amended Complaint, but Federal defendant Kelley denies that any action has been taken by him against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

14. The Federal defendants admit, upon information and belief, that defendant Magruder is a former Special Assistant to the President, but deny, on information and be-

lief, that he is presently serving a prison term. The Federal defendants admit that plaintiffs purport to sue the defendant in his individual and former official capacities.

15. The plaintiffs may not properly sue "John Doe" and "Richard Roe" defendants. Accordingly, the Federal defendants are not required to respond to the allegations contained in paragraph 15 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the Federal defendants admit that Special Agents of the Federal Bureau of Investigation acted in the premises at the behest of certain of the Federal defendants, as stated hereafter, but deny that any special Agent so acting has taken any action against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further deny that plaintiffs are entitled to judicial relief against such unnamed persons in any form or manner.

16. The plaintiffs may not properly sue "James Poe" and "Richard Doe" defendants. Accordingly, the Federal defendants are not required to respond to the allegations contained in paragraph 16 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the Federal defendants deny, on information and belief, that any agents of the Executive Department or other governmental agencies have taken any action against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further deny that plaintiffs are entitled to judicial relief against such unnamed persons in any form or manner.

17. The Federal defendants admit the allegations contained in paragraph 17 of the Second Amended Complaint but, on information and belief, deny that any action has been taken by defendant Chesapeake and Potomac Telephone Company against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further deny that plaintiffs are entitled to judicial relief against such defendants in any form or manner.

18. Federal defendant Kissinger admits that in late April, 1969, in Washington, D.C., he attended a meeting

with then President Nixon and others, during which a decision was made to conduct electronic surveillance of certain persons including employees of the National Security Council, and including plaintiff Morton H. Halperin, in an effort to discover the source of sources of leaks of highly classified information; such investigative program was instituted by the President, and, on information and belief, each electronic surveillance conducted thereunder was authorized by the Attorney General. Federal defendant Kissinger denies all allegations contained in paragraph 18 of the Second Amended Complaint inconsistent herewith. Federal defendants Haig, Sullivan and Kelley lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Second Amended Complaint.

19. The Federal defendants admit, on information and belief, that in May, 1969, the Director of the Federal Bureau of Investigation was advised that on a number of occasions in the preceding weeks, information relating to foreign policy initiatives and to the national defense had appeared in the news media; that the disclosure of such information could cause damage to the national defense; that the disclosure of such information had not been authorized by officials of the United States who had the authority to do so; that the authorized access to such information was limited to a few officials and employees of the United States; that continued disclosures of such information could severely impair the ability of the President to conduct foreign policy and could damage the national security of the United States; that it was the direction of the President of the United States that the Director of the Federal Bureau of Investigation cause to be made an investigation, using every lawful means, to determine the source or sources of the unauthorized disclosures of such information; that defendant Kissinger would provide the Director of the Federal Bureau of Investigation with the names of certain officials and employees of the United States who had access to such information. Federal defendants Kissinger, Haig, Sullivan and Kelley further admit that one of the names provided to the Director of

the Federal Bureau of Investigation by defendant Haig at the direction of defendant Kissinger was that of plaintiff Morton H. Halperin. Federal defendants Kelley and Sullivan admit that thereafter, based upon this and other information in the possession of certain of the defendants and the Federal Bureau of Investigation, agents of the Federal Bureau of Investigation installed an electronic surveillance device upon the telephone of plaintiff Halperin located at his residence at 8215 Stone Trail Drive, Bethesda, Maryland. The Federal defendants deny all allegations contained in paragraph 19 of the Second Amended Complaint inconsistent herewith.

20. Federal defendants Kelley and Sullivan admit, and on information and belief defendants Kissinger and Haig admit that pursuant to the investigative program instituted by then President Nixon as aforesaid, a memorandum was transmitted from the Director of the Federal Bureau of Investigation to defendant Mitchell, then Attorney General of the United States, on May 12, 1969, requesting written authorization for the installation of a telephone surveillance upon the telephone located at the residence of plaintiff Morton H. Halperin at 8215 Stone Trail Drive, Bethesda, Maryland, for the purpose of monitoring the wire communications of the plaintiff, and that on May 12, 1969 written approval for such surveillance was granted by defendant Mitchell. The above Federal defendant further admit that no application for a judicial order or warrant for such surveillance was either sought or procured by any of the Federal defendants. The above Federal defendants deny all allegations contained in paragraph 20 of the Second Amended Complaint inconsistent herewith.

21. Federal defendants Kelley and Sullivan admit, and on information and belief defendants Kissinger and Haig admit that pursuant to the direction of the President of the United States, a telephone surveillance was installed on the telephone at the residence of plaintiff Morton H. Halperin on May 9, 1969, and that such surveillance was conducted by agents of the Federal Bureau of Investigation. The above Federal defendants deny all allegations

contained in paragraph 21 of the Second Amended Complaint inconsistent herewith.

22. Federal defendants Kelley and Sullivan admit that following the authorization of such a surveillance by the President of the United States, the telephone surveillance of the plaintiffs was instituted on May 9, 1969, three days prior to the signing of the written authorization for such surveillance by defendant Mitchell. Federal defendants Kelley and Sullivan deny all allegations contained in the first sentence of paragraph 22 of the Second Amended Complaint inconsistent herewith. Federal defendants Kelley and Sullivan deny the allegations contained in the second sentence of paragraph 22 of the Second Amended Complaint. Federal defendants Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Second Amended Complaint.

23. Federal defendants Kelley and Sullivan admit the allegations contained in paragraph 23 of the Second Amended Complaint. Federal defendants Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Second Amended Complaint.

24. Federal defendants Kelley and Sullivan admit that agents of the Federal Bureau of Investigation, with the assistance of defendant Chesapeake and Potomac Telephone Company, continued the telephone surveillance of the plaintiffs' residence from May 9, 1969 until February 10, 1971. The above Federal defendants deny all allegations contained in paragraph 24 of the Second Amended Complaint inconsistent herewith. Federal defendants Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Second Amended Complaint.

25. Federal defendant Kissinger denies that in September, 1969, he ordered the continuation of the telephone surveillance of the plaintiffs, authorized by the President of the United States. Federal defendant Kissinger further

denies that he was ever called upon to consent or not to consent to the termination of other national security surveillance. Federal defendant Kissinger denies all allegations contained in paragraph 25 of the Second Amended Complaint inconsistent herewith. Federal defendants Kelley, Sullivan, and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Second Amended Complaint.

26. Federal defendants Kelley and Sullivan admit the allegations contained in the first sentence of paragraph 26 of the Second Amended Complaint. Federal defendants Kissinger and Haig lack knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 26 of the Second Amended Complaint. Federal defendants Kelley, Sullivan, Kissinger, and Haig further admit that during the course of the telephone surveillance of the plaintiffs' residence, summaries of the overhears of certain of their conversations were made available to defendants Nixon, Kissinger, Haldeman, Haig, and others by the Federal Bureau of Investigation through the assistance of the then Director J. Edgar Hoover, but deny all allegations contained in the second sentence of paragraph 26 of the Second Amended Complaint inconsistent herewith. Federal defendant Sullivan further denies that he was requested to, or that he transmitted such summaries to defendants Nixon, Kissinger, Haldeman, Haig, and others.

27. Federal defendants Kelley, Sullivan, Kissinger, and Haig admit that during the lawful telephone surveillance of the plaintiffs' residence, summaries of certain of the overhears of the conversations of the plaintiffs were periodically made available to defendants Nixon, Kissinger, Haldeman, Haig, and others for their examination and use, and that such summaries were prepared or caused to be prepared by defendant Sullivan and others who transmitted them to the then Director of the Federal Bureau of Investigation who thereafter transmitted them to defendants Nixon, Haldeman, Kissinger, and others. The above Federal defendants deny all allegations con-

tained in paragraph 27 of the Second Amended Complaint inconsistent herewith.

28. The Federal defendants do not have personal knowledge of the meeting alleged in paragraph 28 of the Second Amended Complaint, and therefore lack knowledge or information sufficient to form a belief as to this allegation; but the Federal defendants admit that after May 13, 1970, all summaries of plaintiffs' telephone conversations were transmitted from former Director Hoover to defendant Haldeman. The Federal defendants deny all allegations contained in paragraph 28 of the Second Amended Complaint inconsistent herewith.

29. The Federal defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Second Amended Complaint.

30. Federal defendants Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Second Amended Complaint. Federal defendant Kelley admits that the files of the Federal Bureau of Investigation reflect that the records relating to the electronic surveillance of the plaintiffs and others were removed from Federal Bureau of Investigation Headquarters at the direction of defendant Sullivan, and were provided to defendant Mardian, then Assistant Attorney General in charge of the Internal Security Division, in the Department of Justice; and that such records were subsequently located in a safe-room in the Old Executive Office Building, but other than aforesaid, Federal defendant Kelley lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Second Amended Complaint. Federal defendant Sullivan admits that he caused to have removed from the Headquarters of the Federal Bureau of Investigation, and delivered to defendant Mardian in the Department of Justice, all records relating to the electronic surveillance of the plaintiffs and others; and that following his retirement from the Federal Bureau of Investigation on October 21,

1971, he learned in May 1973, that such documents were then stored in the Old Executive Office Building, but he denies that such removal by him of the above records was for the purpose of fraudulent concealment, and denies all allegations contained in paragraph 30 of the Second Amended Complaint inconsistent herewith. Federal defendant Sullivan lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the above paragraph.

31. Federal defendant Sullivan denies as to himself, all allegations contained in paragraph 31 of the Second Amended Complaint. Federal defendants Kissinger, Haig and Kelley lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Second Amended Complaint.

31a. Federal defendants Kelley, Sullivan, Kissinger, and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31a of the Second Amended Complaint.

32. Federal defendants Kelley, Sullivan, Kissinger, and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Second Amended Complaint.

33. Federal defendants Kelley and Haig admit that William Ruckelshaus recovered the records of the telephone surveillance of the plaintiffs' residence from a safe-room in the Old Executive Building, and that the original copies of such documents are now in the possession of the Clerk of the United States District Court for the District of Columbia, but deny all allegations contained in paragraph 33 of the Second Amended Complaint inconsistent herewith. Federal defendants Sullivan and Kissinger lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Second Amended Complaint.

34. The Federal defendants deny that the information set forth in paragraph 34 of the Second Amended Complaint accurately quotes the language contained in portions of the July 12, 1974 letter from defendant Nixon to Sena-

tor J. William Fulbright, or that the quoted language reflects what it purports to represent.

35. Federal defendants Kelley, Sullivan, Kissinger and Haig admit that from May 1969 until September 19, 1969, plaintiffs communicated their views in telephone conversations with associates and others, but other than aforesaid, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first sentence of paragraph 35 of the Second Amended Complaint. Federal defendants Kelley, Sullivan, Kissinger, and Haig admit that from May 1969, until September 19, 1969, overhears of plaintiffs' telephone conversations were periodically summarized and that such summaries were made available to defendants Nixon, Kissinger, Haldeman, Haig, and others based upon the continuing telephone surveillance of the plaintiffs' residence during the period in question, but deny all allegations contained in the second sentence of paragraph 35 of the Second Amended Complaint inconsistent herewith.

36. Federal defendants Kelley and Sullivan admit, and on information and belief Federal defendants Kissinger and Haig admit that the lawful interception, disclosure and use of conversations overheard on the telephone located at the plaintiffs' residence continued from May 9, 1969, until February 10, 1971, but deny all allegations contained in the first sentence of paragraph 36 of the Second Amended Complaint inconsistent herewith. Federal defendants Kelley and Sullivan admit, and on information and belief Federal defendants Kissinger and Haig admit the allegations contained in the second and third sentences of paragraph 36 of the Second Amended Complaint. Federal defendants Kissinger, Haig, Kelley and Sullivan admit that the telephone surveillance of the plaintiffs' residence was instituted pursuant to the authority of the President of the United States and the authorization of the Attorney General, and was conducted under the supervision of defendant Sullivan and others, and that summaries of the overhears of such surveillance were, during the course of such surveillance, periodically made available to

defendants Nixon, Kissinger, Haldeman, Haig, and others, but deny all allegations contained in the fourth sentence of paragraph 36 of the Second Amended Complaint inconsistent herewith.

37. Federal defendants Kelley, Sullivan, Kissinger and Haig admit that a December 29, 1969 letter from J. Edgar Hoover, then Director of the Federal Bureau of Investigation to then President Richard M. Nixon stated *inter alia* that "Halperin was recently in contact with an unidentified individual who told Halperin that he had received a call from Clark Clifford. Clifford is probably identical with the former Secretary of Defense. According to this individual he and Clifford discussed an article which Clifford may be preparing. *** This individual then discussed the fact that he had to submit an outline of the article and an introduction of it to Clifford." Federal defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 37 of the Second Amended Complaint, other than as set forth above. Federal defendants Kelley and Sullivan admit that the same information contained in the December 29, 1969 letter from Mr. Hoover to then President Nixon was transmitted the same date to defendants Mitchell and Kissinger by correspondence from Mr. Hoover, but deny all allegations contained in the third sentence of paragraph 37 of the Second Amended Complaint inconsistent herewith. Other than as it relates to themselves, Federal defendants Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph 37 of the Second Amended Complaint. Federal defendants Kelley, Sullivan, Kissinger and Haig lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth, fifth and sixth sentences of paragraph 37 of the Second Amended Complaint. Federal defendants Kelley, Sullivan, Kissinger and Haig deny the allegations contained in the seventh and eighth sentences of paragraph 37 of the Second Amended Complaint to the extent that they relate to the Federal defendants reply to the first three sentences

of the above paragraph, but lack knowledge or information sufficient to form a belief as to the truth of such allegations to the extent they relate to the remaining sentences contained in the above paragraph.

38. Federal defendants Kelley, Sullivan, Kissinger and Haig deny as to themselves, the allegations contained in paragraph 38 of the Second Amended Complaint.

39. The Federal defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Second Amended Complaint.

40. Federal defendants Kelley and Haig admit the allegations contained in the first sentence of paragraph 40 of the Second Amended Complaint. Federal defendants Sullivan and Kissinger lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 40 of the Second Amended Complaint. Federal defendant Haig alleges that during his interview with Special Agents of the Federal Bureau of Investigation, he stated that during the course of the surveillance of plaintiff Morton Halperin his access to certain classified information was restricted, and thereafter he resigned from the National Security Council staff, but denies all allegations contained in the second sentence of paragraph 40 of the Second Amended Complaint inconsistent herewith. Federal defendant Haig denies the allegations contained in the third sentence of paragraph 40 of the Second Amended Complaint. Federal defendants Kelley, Sullivan and Kissinger lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second and third sentences of paragraph 40 of the Second Amended Complaint.

41. Federal defendants Kelley, Sullivan, Kissinger, and Haig admit, as to themselves, that any disclosure or use by them of the telephone conversations of the plaintiffs was made with the knowledge that such communications had been obtained by electronic surveillance of the plaintiffs' telephone, but deny all other allegations contained in paragraph 41 of the Second Amended Complaint.

42. The Federal defendants deny, as to themselves, the allegations contained in paragraph 42 of the Second Amended Complaint.

43. The Federal defendants deny, as to themselves, the allegations contained in paragraph 43 of the Second Amended Complaint.

WHEREFORE, the Federal defendants, having fully answered the allegations contained in the numbered paragraphs of the Second Amended Complaint, hereby pray that the Second Amended Complaint herein be dismissed.

Respectfully submitted,

JOHN C. KENNEY
*Acting Assistant Attorney General*

ROBERT L. KEUCH
*Attorney, Department of Justice*

/s/ _____
EDWARD S. CHRISTENBURY
*Attorney, Department of Justice*

/s/ _____
ELIZABETH G. WHITAKER
*Attorney, Department of Justice*
*Washington, D.C. 20530*
*Phone: 202/739-2361*

*Attorneys for the defendants Kissinger, Haig, Sullivan and Kelley.*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS

## ANSWER TO SECOND AMENDED COMPLAINT BY DEFENDANT RICHARD M. NIXON

Defendant Richard M. Nixon, by counsel, and in answer to the Second Amended Complaint filed herein, says:

### FIRST DEFENSE

The national security electronic surveillance of the telephone installation of the plaintiffs, located at 8215 Stone Trail Drive, Bethesda, Maryland, referred to in the Second Amended Complaint, was authorized by the defendant Nixon, then President of the United States, acting through the Attorney General, in the exercise of his authority relating to the Nation's foreign affairs, and was conducted for foreign policy purposes and was deemed necessary to protect national security information against foreign intelligence activities and as such was lawful and not violative of any provision of the Constitution of the United States or the provision of any Federal statute.

### SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

### THIRD DEFENSE

The Court lacks jurisdiction over the person of defendant Richard M. Nixon.

**FOURTH DEFENSE**

At all times material herein, all activities of the Defendant Nixon in the premises were performed in furtherance of his official duties as President of the United States, were not in excess of his Constitutional and statutory authority, and were within the scope of the broad discretion conferred upon the Office of the President of the United States by Article II of the Constitution. Pursuant to the doctrines of Presidential privilege and immunity, the Defendant Nixon is, therefore, absolutely immune from civil liability therefor and the Courts are without power to review discretionary actions taken within the scope of his authority as President of the United States.

**FIFTH DEFENSE**

At all times material herein, all activities of the Defendant Nixon in the premises were performed in furtherance of his official duties, were within the scope of his authority, and were not in excess of his statutory authority. The aforesaid Defendant Nixon is, therefore, absolutely immune from civil liability therefor under the doctrine of official immunity.

**SIXTH DEFENSE**

The doctrine of sovereign immunity bars any suit against the United States where the United States has not consented to be sued. This suit is barred by the doctrine of sovereign immunity since it is in law and fact a suit against the United States to which the United States has not consented.

**SEVENTH DEFENSE**

At all times material herein, all activities of the Defendant Nixon in the premises were performed in furtherance of his official duties, were undertaken in good faith and in the reasonable belief that such activities were necessary,

lawful and within the scope of his authority. The Defendant Nixon is, therefore, not liable to the plaintiffs in damages for such activity.

**EIGHTH DEFENSE**

The Second Amended Complaint fails to state a claim upon which relief can be granted.

**NINTH DEFENSE**

The claim of the plaintiffs is barred by the Statute of Limitations.

**TENTH DEFENSE**

Answering specifically the allegations contained in the numbered paragraphs of the Second Amended Complaint, the Defendant Nixon avers:

1. The Defendant Nixon admits that the action purports to be an alleged in the first two sentences of paragraph 1 of the Second Amended Complaint, but denies that he has taken any action in violation of the plaintiffs' constitutional or statutory rights. The Defendant Nixon denies the allegations contained in the third sentence of paragraph 1 of the Second Amended Complaint.

2-4. The Defendant Nixon admits, on information and belief, the allegations contained in paragraphs 2-4 of the Second Amended Complaint.

5. The Defendant Nixon admits, on information and belief, the allegations contained in paragraph 5 of the Second Amended Complaint and that the plaintiffs purport to sue Defendant Kissinger individually and in his official capacity.

6. The Defendant Nixon admits the allegations contained in paragraph 6 of the Second Amended Complaint and that the plaintiffs purport to sue him in his individual capacity. Defendant Nixon denies that any action has been taken by him against plaintiffs which is actionable in a suit

for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

7-9. The Defendant Nixon admits, on information and belief, the allegations contained in paragraphs 7-9 of the Second Amended Complaint, and that the plaintiffs purport to sue each of those named defendants in their individual and former official capacities.

10. The Defendant Nixon, on information and belief, denies that defendant Haig is an Assistant to the President, but Defendant Nixon admits, on information and belief, that Defendant Haig was formerly Deputy Assistant to the President of the United States for National Security Affairs, and formerly Military Assistant to Defendant Kissinger, and was residing at the time this action was initiated at Fort McNair, Washington, D.C., and that plaintiffs purport to sue defendant Haig in his individual and official capacities.

11. The Defendant Nixon admits, on information and belief, that until Defendant Sullivan's retirement on June 30, 1973, Defendant Sullivan was the Director of the Office of National Narcotics Intelligence of the United States Department of Justice and that he formerly served as Assistant to the Director of the Federal Bureau of Investigation, and that the plaintiffs purport to sue him in his individual and former official capacities, but denies the remaining allegations contained in paragraph 11 of the Second Amended Complaint.

12. The Defendant Nixon admits, on information and belief, the allegations contained in paragraph 12 of the Second Amended Complaint, and that the plaintiffs purport to sue Defendant Mardian in his individual and former official capacity.

13. The Defendant Nixon admits, on information and belief, the allegations contained in paragraph 13 of the Second Amended Complaint.

14. The Defendant Nixon admits, on information and belief, that Defendant Magruder is a former Special Assistant to the President, but denies, on information and

belief, that he is presently serving a prison term. The Defendant Nixon admits that plaintiffs purport to sue the defendant in his individual and former official capacities.

15. The plaintiffs may not properly sue "John Doe" and "Richard Roe" defendants. Accordingly, the Defendant Nixon is not required to respond to the allegations contained in paragraph 15 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the Defendant Nixon admits, on information and belief, that Special Agents of the Federal Bureau of Investigation acted in the premises at the behest of certain of the Federal defendants, as stated hereafter, but denies that any special Agent so acting has taken any action against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against such unnamed persons in any form or manner.

16. The plaintiffs may not properly sue "James Poe" or "Richard Doe" defendants. Accordingly, the Defendant Nixon is not required to respond to the allegations contained in paragraph 16 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the Defendant Nixon denies, on information and belief, that any agents of the Executive Department of other governmental agencies have taken any action against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against such unnamed persons in any form and manner.

17. The Defendant Nixon admits the allegations contained in paragraph 17 of the Second Amended Complaint but, on information and belief, denies that any action has been taken by Defendant Chesapeake and Potomac Telephone Company against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against the defendants in any form or manner.

18. Defendant Nixon admits that in late April, 1969, in Washington, D.C., he attended a meeting with others, during which a decision was made to conduct electronic surveillance of certain persons including employees of the National Security Council, and including plaintiff Morton H. Halperin, in an effort to discover the source or sources of leaks of highly classified information; Defendant Nixon denies all allegations in paragraph 18 of the Second Amended Complaint inconsistent herewith except that he admits writing the letter to the Chairman of the Senate Foreign Relations Committee referred to in paragraph 34 of the Second Amended Complaint and he stands on the contents of that letter.

19–25. The Defendant Nixon admits the contents of his letter of July 12, 1974, to the Chairman of the Senate Foreign Relations Committee referred to in paragraph 34 of the Second Amended Complaint, but beyond that, lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 19–25 of the Second Amended Complaint.

26–28. The Defendant Nixon presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 26–28 of the Second Amended Complaint.

29. The Defendant Nixon denies, as to himself, the allegations contained in paragraph 29 of the Second Amended Complaint.

30. The Defendant Nixon lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Second Amended Complaint.

31. The Defendant Nixon denies, as to himself, the allegations contained in paragraph 31 of the Second Amended Complaint.

31a. The Defendant Nixon denies, as to himself, the allegations contained in paragraph 31a of the Second Amended Complaint.

32–33. The Defendant Nixon lacks knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraphs 32–33 of the Second Amended Complaint.

34. The Defendant Nixon denies that the information set forth in paragraph 34 of the Second Amended Complaint accurately quotes the language contained in portions of his July 12, 1974, letter to Senator J. William Fulbright, or that the quoted information represents the full text of such letter, but that for the purposes of this action admits that the quoted language reflects what it purports to represent.

35–37. The Defendant Nixon lacks knowledge of information sufficient to form a belief as to the truth of the allegations contained in paragraphs 35–37 of the Second Amended Complaint.

38. The Defendant Nixon denies, as to himself, the allegations contained in paragraph 38 of the Second Amended Complaint.

39–40. The Defendant Nixon lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 39–40 of the Second Amended Complaint.

41–43. The Defendant Nixon denies, as to himself, the allegations contained in paragraphs 41–43 of the Second Amended Complaint.

WHEREFORE, the Defendant Nixon, having fully answered the allegations contained in the numbered paragraphs of the Second Amended Complaint, hereby prays that the Second Amended Complaint herein be dismissed.

Respectfully submitted,

/s/
WILLIAM G. HUNDLEY
CARY MARK FELDMAN
HUNDLEY, CACHERIS & SHARP, P.C.
*1709 N.Y. Ave., N.W. Suite 205*
*Washington, D.C. 20006*
*Attorneys for Defendant Nixon*

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

**ANSWER TO SECOND AMENDED COMPLAINT BY DEFENDANT MITCHELL IN HIS INDIVIDUAL AND FORMER OFFICIAL CAPACITIES**

Defendant John N. Mitchell, in his individual and former official capacities, by counsel, and in response to the Second Amended Complaint filed herein, says:

**FIRST DEFENSE**

The national security electronic surveillance of the telephone installation of the plaintiffs, located at 8215 Stone Trail Drive, Bethesda, Maryland, referred to in the Second Amended Complaint, was authorized by the President of the United States, acting through the Attorney General, in the exercise of his authority relating to the Nation's foreign affairs, and was conducted for foreign policy purposes and was deemed necessary to protect national security information against foreign intelligence activities and as such was lawful and not violative of any provision of the Constitution of the United States or the provision of any Federal statute.

**SECOND DEFENSE**

The Court lacks jurisdiction over the subject matter of this action.

**THIRD DEFENSE**

At all times material herein, all activities of the defendant Mitchell in the premises were performed in fur-

therance of his official duties, were within the scope of his authority, and were not in excess of his statutory authority. The aforesaid defendant Mitchell is, therefore, absolutely immune from civil liability therefor under the doctrine of official immunity.

**FOURTH DEFENSE**

The doctrine of sovereign immunity bars any suit against the United States where the United States has not consented to be sued. This suit is barred by the doctrine of sovereign immunity since it is in law and fact a suit against the United States to which the United States has not consented.

**FIFTH DEFENSE**

At all times material herein, all activities of the aforesaid defendant Mitchell in the premises were performed in the furtherance of his official duties, were undertaken in good faith and in the reasonable belief that such activities were necessary, lawful and within the scope of his authority. The aforesaid defendant Mitchell is, therefore, not liable to the plaintiffs in damages for such activity.

**SIXTH DEFENSE**

The Second Amended Complaint fails to state a claim upon which relief can be granted.

**SEVENTH DEFENSE**

The claim of the plaintiffs is barred by the Statute of Limitations.

**EIGHT DEFENSE**

Answering specifically the allegations contained in the numbered paragraphs of the Second Amended Complaint, the defendant Mitchell avers:

1. The defendant Mitchell admits that the action purports to be as alleged in the first two sentences of paragraph 1 of the Second Amended Complaint, but denies that he has taken any action in violation of the plaintiffs' constitutional or statutory rights. The defendant Mitchell denies the allegations contained in the third sentence of paragraph 1 of the Second Amended Complaint.

2–4. the defendant Mitchell admits, on information and belief, the allegations contained in paragraphs 2–4 of the Second Amended Complaint.

5. The defendant Mitchell admits, on information and belief, the allegations contained in paragraph 5 of the Second Amended Complaint and that the plaintiffs purport to sue defendant Kissinger individually and in his official capacity.

6. The defendant Mitchell admits, on information and belief, the allegations contained in paragraph 6 of the Second Amended Complaint and that the plaintiffs purport to sue defendant Nixon in his individual capacity.

7. The defendant Mitchell admits the allegations contained in paragraph 7 of the Second Amended Complaint and that the plaintiffs purport to sue him individually and in his former official capacity. Defendant Mitchell denies that any action has been taken by him against plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that the plaintiffs are entitled to judicial relief against him in any form or manner.

8 and 9. The defendant Mitchell admits, on information and belief, the allegations contained in paragraphs 8 and 9 of the Second Amended Complaint, and that the plaintiffs purport to sue each of those named defendants in their individual and former official capacities.

10. The defendant Mitchell, on information and belief, denies that defendant Haig is an Assistant to the President, but defendant Mitchell admits, on information and belief, that defendant Haig was formerly Deputy Assistant to the President of the United States for National Security Affairs, and formerly Military Assistant to defendant Kis-

singer, and was residing at the time this action was initiated at Fort McNair, Washington, D.C., and that plaintiffs purport to sue defendant Haig in his individual and official capacities.

11. The defendant Mitchell admits, on information and belief, that until his retirement on June 30, 1973, defendant Sullivan was the Director of the Office of National Narcotics Intelligence of the United States Department of Justice and that he formerly served as Assistant to the Director of the Federal Bureau of Investigation, and that the plaintiffs purport to sue him in his individual and former official capacities, but denies the remaining allegations contained in paragraph 11 of the Second Amended Complaint.

12. The defendant Mitchell admits, on information and belief, the allegations contained in Paragraph 12 of the Second Amended Complaint, and that the plaintiffs purport to sue defendant Mardian in his individual and former official capacity.

13. The defendant Mitchell admits, on information and belief, the allegations contained in paragraph 13 of the Second Amended Complaint.

14. The defendant Mitchell admits, on information and belief, that defendant Magruder is a former Special Assistant to the President, but denies, on information and belief, that he is presently serving a prison term. The defendant Mitchell admits that plaintiffs purport to sue the defendant in his individual and former official capacities.

15. The plaintiffs may not properly sue "John Doe" and "Richard Roe" defendants. Accordingly, the defendant Mitchell is not required to respond to the allegations contained in paragraph 15 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the defendant Mitchell admits, on information and belief, that Special Agents of the Federal Bureau of Investigation acted in the premises at the behest of certain of the Federal defendants, as stated hereafter, but denies that any Special Agent so acting has taken any action against the plaintiffs which is actionable in a

suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against such unnamed persons in any form or manner.

16. The plaintiffs may not properly sue "James Poe" or "Richard Doe" defendants. Accordingly, the defendant Mitchell is not required to respond to the allegations contained in paragraph 16 of the Second Amended Complaint. If an action may properly be brought against such unnamed persons, the defendant Mitchell denies, on information and belief, that any agents of the Executive Department of other governmental agencies have taken any action against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against such unnamed persons in any form or manner.

17. The defendant Mitchell admits the allegations contained in paragraph 16 of the Second Amended Complaint but, on information and belief, denies that any action has been taken by defendant Chesapeake and Potomac Telephone Company against the plaintiffs which is actionable in a suit for violation of their constitutional or other legal rights and further denies that plaintiffs are entitled to judicial relief against such defendants in any form or manner.

18. The defendant Mitchell admits, on information and belief, that in May, 1969, defendant Kissinger, acting in his official capacity as Assistant to the President for National Security Affairs, communicated to the Director of the Federal Bureau of Investigation the fact that on a number of occasions in the preceding weeks, information relating to foreign policy initiatives and to the national defense had appeared in the news media; that the disclosure of such information could cause damage to the national defense,; that the disclosure of such information had not been authorized by officials of the United States who had the authority to do so; that the authorized access to such information was limited to a few officials and employees of the United States; that continued disclosures of

such information could severely impair the ability of the President to conduct foreign policy and could damage the national security of the United States; that it was the direction of the President of the United States that the Director of the Federal Bureau of Investigation cause to be made an investigation, using every lawful means, to determine the source or sources of the unauthorized disclosures of such information; that the defendant Kissinger would provide the Director of the Federal Bureau of Investigation the names of certain officials and employees of the United States who had access to such information. The defendant Mitchell denies all allegations contained in paragraph 18 of the Second Amended Complaint inconsistent herewith.

19. The defendant Mitchell admits, on information and belief, that in May, 1969, defendant Kissinger, acting in his official capacity as Assistant to the President for National Security Affairs, communicated to the Director of the Federal Bureau of Investigation the fact that on a number of occasions in the preceding weeks, information relating to foreign policy initiatives and to the national defense had appeared in the news media; that the disclosure of such information could cause damage to the national defense; that the disclosure of such information had not been authorized by officials of the United States who had the authority to do so; that the authorized access to such information could severely impair the ability of the President to conduct foreign policy and could damage the national security of the United States; that it was the direction of the President of the United States that the Director of the Federal Bureau of Investigation cause to be made an investigation, using every lawful means, to determine the source or sources of the unauthorized disclosures of such information; that defendant Kissinger would provide the Director of the Federal Bureau of Investigation the names of certain officials and employees of the United States who had access to such information. The defendant Mitchell admits, on information and belief, that

one of the names provided the Director of the Federal Bureau of Investigation by defendant Haig at the direction of defendant Kissinger was that of plaintiff Morton H. Halperin and that thereafter, based upon this and other information in the possession of the defendant and the Federal Bureau of Investigation, agents of the Federal Bureau of Investigation installed an electronic surveillance device upon the telephone of plaintiff Halperin located at his residence at 8215 Stone Trail Drive, Bethesda, Maryland. The defendant Mitchell denies all allegations contained in paragraph 19 of the Second Amended Complaint inconsistent herewith.

20. The defendant Mitchell admits that on May 12, 1969, a memorandum was transmitted from the Director of the Federal Bureau of Investigation to defendant Mitchell, then Attorney General of the United States, requesting written authorization for the installation of a telephone surveillance upon the telephone located at the residence of plaintiff Morton H. Halperin at 8215 Stone Trail Drive, Bethesda, Maryland, for the purpose of monitoring the wire communications of the plaintiff, and that on May 12, 1969, written approval for such surveillance was granted by defendant Mitchell. The defendant Mitchell further admits that no application for a judicial order or warrant for such surveillance was either sought or procured by any of the Federal defendants. The defendant Mitchell denies all allegations contained in paragraph 20 of the Second Amended Complaint inconsistent herewith.

21. The defendant Mitchell admits that pursuant to the direction of the President of the United States, a telephone surveillance was installed on the telephone at the residence of plaintiff Morton H. Halperin on May 9, 1969, and that such surveillance was conducted by agents of the Federal Bureau of Investigation. The defendant Mitchell denies all allegations contained in paragraph 21 of the Second Amended Complaint inconsistent herewith.

22. The defendant Mitchell admits that following the authorization of such a surveillance by the President of the United States, the telephone surveillance of the plaintiffs

was instituted on May 9, 1969, three days prior to the signing of the written authorization for such surveillance by defendant Mitchell. The defendant Mitchell denies all allegations contained in the first sentence of paragraph 22 of the Second Amended Complaint inconsistent herewith. The defendant Mitchell denies the allegations contained in the second sentence of paragraph 22 of the Second Amended Complaint.

23. The defendant Mitchell admits the allegations contained in paragraph 23 of the Second Amended Complaint.

24. The defendant Mitchell, admits that agents of the Federal Bureau of Investigation, with the assistance of defendant Chesapeake and Potomac Telephone Company, continued the telephone surveillance of the plaintiffs' residence from May 9, 1969, until February 10, 1971. The defendant Mitchell denies all allegations contained in paragraph 24 of the Second Amended Complaint inconsistent herewith.

25. The defendant Mitchell lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Second Amended Complaint.

26. The defendant Mitchell admits the allegations contained in the first sentence of paragraph 26 of the Second Amended Complaint. The defendant Mitchell further admits that during the course of the telephone surveillance of the plaintiffs' residence, summaries of the overhears of certain of their conversations were made available to defendants Kissinger, Haldeman and Haig by the Federal Bureau of Investigation through the assistance of the then Director, J. Edgar Hoover, but denies all allegations contained in the second sentence of paragraph 26 of the Second Amended Complaint inconsistent herewith.

27. The defendant Mitchell, admits that during the lawful telephone surveillance of the plaintiffs' residence, summaries of certain of the overhears of the conversations of the plaintiffs were periodically made available to defendants Kissinger, Haldeman and Haig for their examination and use, and that such summaries were prepared or

caused to be prepared by defendant Sullivan and others. The defendant Mitchell denies all allegations contained in paragraph 27 of the Second Amended Complaint inconsistent herewith.

28–31a. The defendant Mitchell lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 28–31a of the Second Amended Complaint.

32. The defendant Mitchell denies the allegations contained in paragraph 32 of the Second Amended Complaint.

33. The defendant Mitchell lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Second Amended Complaint.

34. The defendant Mitchell denies that the information set forth in paragraph 34 of the Second Amended Complaint accurately quotes the language contained in portions of the July 12, 1974, letter from defendant Nixon to Senator J. William Fulbright, or that the quoted information represents the full text of such letter, but that for the purposes of this action admits that the quoted language reflects what it purports to represent.

35. The defendant Mitchell admits that from May, 1969, until September 19, 1969, plaintiffs communicated their views in telephone conversations with associates and others, but other than aforesaid, lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the first sentence of paragraph 35 of the Second Amended Complaint. The defendant Mitchell admits that from May, 1969, until September 19, 1969, overhears of plaintiffs' telephone conversations were periodically summarized and that such summaries were made available to defendants Kissinger, Haldeman, Haig and other based upon the continuing telephone surveillance of the plaintiffs' residence during the period in question, but denies all allegations contained in the second sentence of paragraph 35 of the Second Amended Complaint inconsistent herewith.

36. The defendant Mitchell admits that the lawful interception, disclosure and use of conversations overheard on the telephone located at the plaintiffs' residence continued from May 9, 1969, until February 10, 1971, but denies all allegations contained in the first sentence of paragraph 36 of the Second Amended Complaint inconsistent herewith. The defendant Mitchell admits the allegations contained in the second and third sentences of paragraph 36 of the Second Amended Complaint. The defendant Mitchell admits that the telephone surveillance of the plaintiffs' residence was instituted pursuant to the authorization of the President of the United States and was conducted under the supervision of defendant Sullivan and others, and that summaries of the overhears of such surveillance were, during the course of such surveillance, periodically made available to Federal defendants Kissinger, Haldeman and Haig but denies all allegations contained in the fourth sentence of paragraph 36 of the Second Amended Complaint inconsistent herewith.

37. The defendant Mitchell admits that a December 29, 1969, letter from J. Edgar Hoover, then Director of the Federal Bureau of Investigation to then President Richard M. Nixon stated *inter alia* that "Halperin was recently in contact with an unidentified individual who told Halperin that he had received a call from Clark Clifford. Clifford is probably identical with the former Secretary of Defense. According to this individual he and Clifford discussed an article which Clifford may be preparing. * * * This individual then discussed the fact that he had to submit an outline of the article and an introduction of it to Clifford." The defendant Mitchell lack knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Second Amended Complaint, other than as set forth above.

38. The defendant Mitchell denies, as to himself, the allegations contained in paragraph 38 of the Second Amended Complaint.

39 and 40. The defendant Mitchell lacks knowledge or information sufficient to form a belief as to the truth of the

allegations contained in paragraphs 39 and 40 of the Second Amended Complaint.

41. The defendant Mitchell admits, as to himself, that any disclosure or use by him of the telephone conversations of the plaintiffs was made with the knowledge that such communications had been obtained by electronic surveillance of the plaintiffs' telephone, but denies all other allegations contained in paragraph 41 of the Second Amended Complaint.

42 and 43. The defendant Mitchell denies, as to himself, the allegations contained in paragraphs 42 and 43 of the Second Amended Complaint.

WHEREFORE, the defendant Mitchell, having fully answered the allegations contained in the number paragraphs of the Second Amended Complaint, hereby prays that the Second Amended Complaint herein be dismissed.

Respecfully submitted,

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS

*v.*

HENRY A. KISSINGER, ET AL., DEFENDNATS

**ANSWER TO SECOND AMENDED COMPLAINT BY DEFENDANT HALDEMAN**

Comes now defendant H.R. Haldeman, by his undersigned attorneys, and in answer to the Second Amended Complaint filed herein, says:

**FIRST DEFENSE**

The national security electronic surveillance of the telephone installation of the plaintiffs, located at 8215 Stone Trail Drive, Bethesda, Maryland, referred to in the Second Amended Complaint, was authorized by the President of the United States, acting through the Attorney General, in the exercise of his authority relating to the Nation's foreign affairs, and was conducted for foreign policy purposes and was deemed necessary to protect national security information against foreign intelligence activities and as such was lawful and not violative of any provision of the Constitution of the United States or the provision of any Federal statute.

**SECOND DEFENSE**

The Court lacks jurisdiction over the subject matter of this action.

**THIRD DEFENSE**

At all times material herein, all activities of defendant Haldeman in the premises were performed in furtherance

of his official duties, were within the scope of his authority, and were not in excess of his statutory authority. Defendant Haldeman is, therefore, absolutely immune from civil liability therefor under the doctrine of official immunity.

**FOURTH DEFENSE**

The doctrine of sovereign immunity bars any suit against the United States where the United States has not consented to be sued. This suit is barred by the doctrine of sovereign immunity since it is in law and fact a suit against the United States to which the United States has not consented.

**FIFTH DEFENSE**

At all times material herein, all activities of defendant Haldeman in the premises were performed in furtherance of his official duties, were undertaken in good faith and in the reasonable belief that such activities were necessary, lawful and within the scope of his authority. Defendant Haldeman is, therefore, not liable to the plaintiffs in damages for such activity.

**SIXTH DEFENSE**

The Second Amended Complaint fails to state a claim against defendant Haldeman in either his official or individual capacities upon which relief can be granted.

**SEVENTH DEFENSE**

The claim of the plaintiffs is barred by the Statute of Limitations.

**EIGHTH DEFENSE**

The Court lacks jurisdiction over defendant Haldeman for the reason that service of process upon him was invalid.

## NINTH DEFENSE

Answering specifically the allegations contained in the numbered paragraphs of the Second Amended Complaint, defendant Haldeman says:

1. That he is not required to answer the legal conclusions set forth in paragraph 1, and he denies that the amount in controversy, exclusive of interest and costs, exceeds $10,000.

2–4. Defendant Haldeman admits that plaintiff Morton H. Halperin was Assistant to the defendant Kissinger and later an Assistant Deputy Secretary of Defense, but he is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraphs 2–4.

5. Admitted, except for the last sentence, as to which no answer is required.

6. Admitted, except for the last sentence, as to which no answer is required.

7. Admitted, except for the last sentence, as to which no answer is required.

8. Defendant admits that he is a former Assistant to the President of the United States; and he is not required to answer the last sentence of said paragraph. Defendant denies that his residence at the time this action was initiated was 2402 R Street, N.W., Washington, D.C.

9. Defendant Haldeman admits the allegations pertaining to defendant Ehrlichman's employment, but is without knowledge or information sufficient to form a belief as to the allegations pertaining to John Ehrlichman's residence. No answer is required to the last sentence of paragraph 9.

10. Defendant Haldeman admits that Alexander Haig formerly held the positions described in paragraph 10 but is without information sufficient to form a belief as to the residence of Alexander Haig at the time the action was initiated. Defendant is not required to answer the last sentence of paragraph 10.

11. Defendant Haldeman admits that William Sullivan formerly held the positions ascribed to him in paragraph 11, but is without information or knowledge sufficient to form a belief as to his residence, and is not required to answer the last sentence of paragraph 11.

12. Defendant Haldeman admits that Robert Mardian formerly held the positions ascribed to him in paragraph 12, but is without information as to his residence, and is not required to answer the last sentence of paragraph 12.

13. The first sentence of paragraph 13 is admitted; no response is required to the second sentence thereof.

14. Defendant Haldeman admits that defendant Magruder is a former Special Assistant to the President, and is not required to answer the last sentence of paragraph 14. The residence alleged for defendant Magruder is denied.

15 and 16. No response is required to paragraphs 15 and 16.

17. On information and belief, admitted.

18. Defendant Haldeman, on information and belief, incorporates herein the first two sentences of the answer of federal defendant Kissinger to the second amended complaint and, in further answer, defendant Haldeman denies that he initiated electronic surveillance of plaintiffs. Defendant Haldeman denies all allegations contained in paragraph 18 of the second amended complaint not specifically answered herein.

19. Defendant Haldeman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the second amended complaint.

20. Defendant Haldeman denies that he initiated an electronic surveillance of plaintiffs' residence telephone and he is without information sufficient to form a belief as to the administrative procedures which were followed by the others named in paragraph 20 in connection with the electronic surveillance at plaintiffs' residence, which defendant Haldeman believes was conducted with valid authority. Defendant Haldeman denies all allegations con-

tained in paragraph 20 of the second amended complaint which are not specifically answered herein.

21. Defendant Haldeman denies that he directed or procured the installation of an electronic surveillance upon the home telephone of the plaintiffs, but on the basis of knowledge and information he believes such a device was installed by persons not known to him.

22–25. Defendant Haldeman is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraphs 22–25 of the second amended complaint.

26–27. Defendant Haldeman admits that he received reports of electronic surveillances but he has no specific recollection of reports of electronic surveillance of plaintiffs' home telephone. Defendant Haldeman is without knowledge or information sufficient to form a belief as to which of the defendants, if any, intercepted such conversations, and denies that the surveillance was illegal or that he procured disclosure of reports of such interceptions.

28. Defendant Haldeman does not recall being in the meeting described in paragraph 28 of the second amended complaint, and he lacks information sufficient to form a belief as to whether he was present at such meeting. On information and belief, defendant Haldeman believes that the instructions referred to in said paragraph 28 were given. Defendant Haldeman is without knowledge or information to further answer the remaining allegations of paragraph 28.

29, 30, 31, 31A, 32, 33, 34. Defendant Haldeman is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 29, 30, 31, 31A, 32, 33, and 34 of the second amended complaint.

35. Defendant Haldeman has no specific recollection of reports pertaining to the plaintiffs in the period alleged, and it is his belief that he did not receive such reports. Defendant is without knowledge or information sufficient to form a belief as to the second sentence of paragraph 35 of the second amended complaint.

36. Defendant Haldeman denies that he acted illegally as alleged in the first sentence of paragraph 36 and he is without knowledge or information sufficient to form a belief as to the period of the surveillance and as to the matters alleged in the second, third and fourth sentences of paragraph 36 except that he acknowledges that he may have received some reports pertaining to the electronic surveillance of plaintiffs' residence during some part of the period referred to in paragraph 36 of the second amended complaint.

37. Defendant Haldeman admits learning on January, 1970, that Clark Clifford was to write an article for Life Magazine which would be strongly against the United States Vietnamese policy and that he made comments with regard to suggestions of defendant Magruder concerning a response to such criticism. Defendant Haldeman lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 37 of the second amended complaint other than as herein stated. Defendant Haldeman denies the last two sentences of paragraph 37 of the second amended complaint.

38. Denied.

39, 40. Defendant Haldeman is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 39 and 40.

41, 42, 43. Denied.

Defendnat Haldeman denies each and every allegation of the complaint to which he has not specifically responded herein.

WHEREFORE, defendant Haldeman prays that he have judgment against each plaintiff, that the second

amended complaint be dismissed, and that he be awarded costs and reasonable attorneys' fees.

/s/ _____
JOHN J. WILSON

/s/ _____
FRANK H. STRICKLER

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*Tel. 638-0465*

*Attorneys for Defendant H.R. Haldeman*

## CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March 1975, a true copy of the foregoing answer was mailed first class postage prepaid to each of the following:

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FRANK H. STRICKLER

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

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No. 72-3070

THOMAS REESE, ET AL., PLAINTIFFS,

*v.*

RICHARD M. NIXON, ET AL., DEFENDANTS.

## MEMORANDUM

**[May 3, 1974]**

*Appeal from the United States District Court for the Central District of California*

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Before ELY, HUFSTEDLER and SNEED, Circuit Judges

The district court erred in dismissing this civil rights action without leave to amend. Although the complaint's general allegations of conspiracy, purpose, intent, and color of authority are vague, conclusory, and rambling, they are adequate to withstand a motion to dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure. A civil rights action may not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41. . . ." (*Cohen v. Norris* (9th Cir. en banc 1962) 300 F.2d 24, 32; *accord*, *Haines v. Kerner* (1972) 404 U.S. 519). The complaint does fail to set forth the overt acts of the defendants in furtherance of the objects of the conspiracy. (*Hoffman v. Halden* (9th Cir. 1959) 268 F.2d 280, 295-96, *overruled on other grounds*, *Cohen v. Norris*, *supra*.) However, to

the extent that further particularity is needed, the defendants can move for a more definite statement under Rule 12(c), Federal Rules of Civil Procedure.

Even if the motion to dismiss had been properly granted, the district court abused its discretion in rejecting appellants' request to amend the complaint. (*See generally Foman v. Davis* (1962) 371 U.S. 178.)

The district court properly dismissed the fictitiously named defendants under Rule 4(j) of the Local Rules of the United States District Court, Central District.

We do not reach the question whether the district court has power to assert jurisdiction over the President because we agree with the district court that no claim for relief has been or can be stated against the President under the doctrine of executive immunity explicated in *Barr v. Matteo* (1959) 360 U.S. 564 and *Scheuer v. Rhodes* (1974). . . . U.S.. . . . (*See also Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics* (3d Cir. 1972) 456 F.2d 1339.)

The doctrine of executive immunity, however, is inadequate at this stage of the case to insulate the remaining federal and state officials named as defendants. Executive officials do not possess an absolute and comprehensive immunity as to all acts allegedly performed within the scope of their official duty (*Scheuer v. Rhodes, supra, at. . . .*) An official is immune only if he performs "discretionary acts at those levels of government where the concept of duty encompasses the sound exercise of discretionary authority" (*Barr v. Matteo, supra* at 575 (Harland, J.)) and only when the act complained of is "within the outer perimeter of [his] line of duty" (*id.*). A determination as to the applicability of executive immunity to the named defendants other than the President cannot be made in the absence of a factual record, because the extent of the qualified immunity to which the defendants are entitled depends upon "the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which lia-

bility is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good faith belief, that affords basis for qualified immunity of executive officers for acts performed in the course of official conduct." (*Scheuer v. Rhodes, supra* at. . . .) The record is far too unclear presently to ascertain which official or officials acted within the range of discretion permitted the holders of particular offices and acted in good faith. The plaintiffs are entitled to be heard more fully than is possible on a motion to dismiss a complaint. (*See id.* at. . . .)

The prosecutors are not immunized from suit unless the acts complained of took place as an integral part of judicial process. (*Donovan v. Reinbold* (9th Cir. 1970) 433 F.2d 738, 743-44; *Robichaud v. Ronan* (9th Cir. 1965) 351 F.2d 533, 536.) Until the record is more fully developed, it is not possible to determine whether immunity extends to the prosecutors named as defendants.

The record is also too poorly developed to sustain a conclusion that abstention is appropriate in respect of defendant Flournoy. The suggestion that defendant Flournoy is being sued for his role as state tax collector in the process of collecting taxes is no more than conjecture.

Affirmed in part, reversed in part, and remanded to the district court for further proceedings consistent with the views herein expressed.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO 5-7-74—480

# UNITED STATES DISTRICT COURT
# CENTRAL DISTRICT OF CALIFORNIA

Civil No. 73-2442-MML

Order Dismissing Action as to the President of the United States

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JANE FONDA, PLAINTIFF,

*v.*

RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS.

On behalf of Richard M. Nixon, President of the United States, the United States Attorney and the Department of Justice have moved for an order quashing the service of process upon the President and have suggested the dismissal of the action with regard to the President. This Court held a hearing on that motion on April 8, 1974. After considering the pleadings filed, the record, and the arguments of counsel, this Court has rendered an opinion on the matter. In accordance with that opinion, rendered on May 23, 1974, this Court hereby

ORDERS:

1. The motion to quash the service of process is denied.

2. The action is dismissed as to Richard M. Nixon, President of the United States, with prejudice.

3. The Court finds that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of this litigation.

4. Each side shall bear its own costs.

Dated: May 23, 1974

/s/ _____

]MALCOLM M. LUCAS
*United States District Judge*

# UNITED STATES DISTRICT COURT
# CENTRAL DISTRICT OF CALIFORNIA

Civil No. 73-2442-MML

JANE FONDA, PLAINTIFF,

*v.*

RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, ET AL., DEFENDANTS.

## OPINION REGARDING SERVICE OF PROCESS UPON THE PRESIDENT OF THE UNITED STATES

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Jane Fonda, the well-known actress and critic of United States activity in Southeast Asia, began this suit in October 1973 to obtain remedies for the alleged infringements of her civil rights by government officers. Unlike many civil rights cases, brought against local government officials or minor federal officers, this one seeks redress against present or former high-level federal law-enforcement officers, members of the Cabinet, advisers to the President, and the President of the United States.

Fonda contends that the defendants conspired among themselves to deprive her of her civil rights. The complaint does not exhaustively delineate the conspiracy, but the plaintiff has furnished some details about her claim. According to Fonda, Presidential advisers drafted the Huston Plan, which the President approved, to encourage government action against political dissidents.[1] The Huston Plan is described in some White House documents, first revealed publicly during the Watergate investiga-

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[1] The specific details appear in an affidavit filed by Leonard I. Weinglass, one of Fonda's attorneys, in opposition to a motion by Huston for dismissal. An unsigned copy was filed on March 4, 1974; the signed copy, with corrections, was filed on March 5, 1974.

tion.[2] As outlined in these documents, the plan included an increase in electronic surveillance of persons in the United States who posed a threat to internal security, relaxation of restrictions on legal mail coverage and on covert mail coverage, removal of barriers to surreptitious entry of facilities occupied by persons, an increase in coverage of campus activity, and other measures. Some portions—specifically the surreptitious entry and covert mail coverage—were recognized as illegal. The Huston Plan is not the only action taken at the White House by which Fonda claims to have been affected. Fonda's name allegedly appeared in an "enemies list" at the White House, and memoranda concerning her were allegedly present in White House files. By these steps and perhaps by other maneuvers, Fonda claims, the officials at the White House either commanded the specific wrongs done to her or directed activity that established a pattern or practice of anti-dissident measures leading to these wrongs, or tolerated the custom of taking those measures against dissidents.[3]

The specific events described as wrongs done to her include seizure of her personal papers, opening of her mail, electronic surveillance of her telephone calls, procurement of information from her bank records, and placement of false telephone calls to her to investigate her family's activities. These occurrences allegedly interfered with her exercise of her civil rights and civil liberties.

As relief she seeks compensatory damages, punitive damages from each defendant, an injunction, a declaratory judgment, and a writ of mandamus. The demand for damages forms a major part of the action and the demand is for a considerable sum, a total of several million dollars.

From Richard M. Nixon, President of the United States, she demands relief of every kind, including damages. On President Nixon's behalf the government has moved for an order quashing the service of process upon

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[2] Copies are attached to the Weinglass affidavit.

[3] See ¶42 of the complaint.

him. Added to the motion is a request denominated as "suggestion for dismissal of this action as to the President of the United States," in which the government contends that this Court should dismiss the action on the Court's own motion.

The government contends that a United States court, organized pursuant to Article III of the Constitution, has no jurisdiction to entertain an action against the President. The government views him as immune from the judicial process itself, not merely possessed of defenses on the merits against the action to be instituted, except in limited and narrowly defined circumstances. In support of the claim to immunity, the government cites the doctrine of separation of powers. The government also argues that subjection of the President to the legal process in suits for damages, injunctive relief, or declaratory relief would influence his administration of office and restrict his independence, in derogation of the Framers' design that there should be no infringement on his will and resolution. Such suits would not only dampen his ardor, but would also consume his personal time, the government fears, and with some justification. Consequently it urges not merely a dismissal on the ground that no relief can be obtained, but dismissal on the broader ground that no action can even be instituted.

By discussing the separation of powers, the government invokes the principle, included in the political question doctrine, that some matters are committed exclusively to branches of the government other than the judiciary. The government's argument resolves itself into the alternative contentions that a suit against the President necessarily concerns the use of power committed to that office or that the suit necessarily concerns the exercise of discretion belonging to that office.

Although a few cases do suggest that the judicial power does not extent to cases involving the President's power, those cases must be read carefully. In the early case of *Kendall v. United States*, 37 U.S. (12 Peter 524, 610 (1838), the court did proclaim:

> The executive power is vested in a president; and so far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power.

This discussion of Presidential power was not entirely necessary, since the President was not a party and the case did not concern Presidential conduct.[4] Nor should the quoted language be read as a statement that persons exercising powers granted by the Constitution are exempt from the legal process of the judiciary. The official whose action was the subject of the suit, the Postmaster-General, tried to shroud himself with Presidential prerogatives by claiming that only the President could exert direction and control over him, so that the judiciary could not order him to take action. The court flatly rejected that contention:

> It would be vesting in the president a dispensing power, which has no countenance for its support, in any part of the constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the president with a power entirely to control the legislation of congress and paralyze the administration of justice.

Id., 611. In so ruling, the court was implicitly declaring itself empowered to take jurisdiction and decide whether a particular function was one within the exclusive domain of the executive. The court's statement quoted earlier in the paragraph should be read in context to mean that the courts, taking jurisdiction, will decline to issue remedies interfering with certain executive powers, not that the court's process fails to reach the executive branch.

A good example of the political question doctrine, involving the exercise of Presidential power, is *Hobson v. Tobriner*, 255 F. Supp. 295 (D.D.C. 1966), cited by the government. There the plaintiff filed a civil rights action

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[4]The official involved, the Postmaster General, did not have only Constitutional functions. The court held that he had statutory powers as well. The statutory powers were certainly subject to control through mandamus, the remedy sought in the case.

to enjoin the appointment of commissioners for the government of the District of Columbia and to order elections instead. The court said that the relief demanded would invade the political power of Congress and the duty of the President. This decision reflects a judgment about the nature of the power committed to the President and the impropriety of relief, not merely a recognition that the President was involved. It does not reflect that belief that the mere presence of the President paralyzes the courts. Like *Kendall*, it treats the separation of powered concept as a factor going to the judicial remedies rather than the availability of the judicial process.

Closely related to the argument that a power is reserved to the President is the contention that in certain matters he has a discretion reserved to him. This is reflected in the traditional doctrine that the judiciary can control ministerial functions, but not discretionary ones, mandamus or similar remedies. The use of Presidential discretion was the subject in *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475 (1867), another case cited by the government. The State of Mississippi sued to enjoin the President from executing the Reconstruction Acts, on the theory that they were unconstitutional. In reply the Attorney General argued explicitly that the suit was defective because the President could not be served with process. The court held that the President could not be enjoined, even if he could be sued, because that suit would interfere with his discretion in enforcing the law. Analogizing a suit to enjoin action to a suit for mandamus to compel action,[5] the court ruled that injunctive relief would not be issued to restrain the exercise of discretion just as a mandamus would not be issued to compel performance of a discretionary duty. The court never reached the question about service of process. Like cases about

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[5]The analogy is now rather doubtful. Injunctions can be used to restrain officials from executing a law when that law is unconstitutional. E.g., *Ex Parte Young*, 209 U.S. 123 (1908). The courts do not accept the theory that an officer has discretion to decide whether a law is valid. The courts decide it for him.

discretionary duty, *Mississippi v. Johnson* turned on the nature of the duty, not the fact that the President had that duty,[6] and it concerned relief rather than the service of process.

Landmark cases like *Kendall* and *Mississippi v. Johnson*, often cited in support of Presidential immunity, were really cases about remedies or subject matter only. The courts ruled only after consideration of the subject matter, the nature of the power and its exercise, not merely the identity of the defendant. The presence of a political question or other suggestions of a problem stemming from the separation of powers are matters going to the court's jurisdiction over the subject matter or to remedies, not one going to its power to serve process upon the President. This distinction was made in the recent cases of *National Treasury Employee Union v. Nixon*, No. 72- D.C. Cir-25, *Nixon v. Sirica*, 487 F.2d 700, 712 (D.C. Cir. 1978). It is implicit in *Minnesota Chippewa Tribe v. Carlucci*, 358 F. Supp. 973 (D.D.C. 1970).

The courts rather than the President will examine the power and decide whether the case involves political questions or unreviewable discretion. Even when a matter arguably is committed to another branch by the express language of the Constitution, the courts will inspect the subject matter to decide whether it fits the terms of the commitment. See *Powell v. McCormack*, 395 U.S. 486 (1969).

These statements imply the rejection of any notion that the nature of a political question has anything to do with the service of process. The judiciary will use its process against an official. If he prevails because there is a political question or unreviewable discretion, his victory is due to the nature of the subject matter, not to his identity as an official. If the court finds neither a political question nor unreviewable discretion to bar jurisdiction, the court can act against the President. *National Treasury Em-*

[6]The power of the President is not made discretionary simply because the President possess it. *National Treasury Employees Union v. Nixon*, *infra*.

*ployees Union v. Nixon, supra;* see *United States v. Burr*, 25 Fed. Cases 30 (No. 14,692d) (C.C.D. Va. 1807). Certainly after the recent decision in *National Treasury Employees Union v. Nixon* and *Nixon v. Sirica*, the courts will exert the judicial process against the President and leave the argument about the separation of powers to the determination of subject matter jurisdiction or the propriety of relief.[7]

If court action always interfered with the President's performance of duties, making the President less zealous

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[7] For the proposition that the President enjoys a total exemption from the jurisdiction of the courts, the government cites, in addition to *Hobson v. Tobriner* and *Mississippi v. Johnson*, the recent cases of *Davis v. Nixon*, No. 73-1520-LTL(G) (C.D. Cal., Nov. 29, 1973) (Lydick, J.); *San Francisco Redevelopment Agency v. Nixon*, 329 F. Supp. 672 (N.D. Cal. 1971); *Reese v. Nixon*, 347 F. Supp. 314 (C.D. Cal. 1972) (Hauk, J.), *aff'd on other grounds as to the dismissal of the action against the President*, No. 72-3070 (9th Cir. May 3, 1974) (unpublished opinion); and *Suskin v. Nixon*, 304 F. Supp. 71 (N.D. Ill. 1969). The judge in *Davis* wrote no opinion, and so there is no written description of his reasons for dismissal. In *San Francisco Redevelopment Agency*, a suit for mandamus to compel the release of money, the court dismissed the action against the President and quashed service of process because no authority supported the proposition that a court could compel Presidential action. The District of Columbia Circuit has subsequently provided that authority in *National Treasury Employees Union v. Nixon, supra*. To the extent that *San Francisco Redevelopment Agency* relates the questions above propriety of compelling action to the validity of service of process, is undercut by the recent District of Columbia Circuit cases distinguishing between the power to consider certain subjects and the service of process on the President. In *Reese*, the District Court decided it had no jurisdiction over the President because of the separation of powers, and in *Suskin*, the court quashed service of process because the power involved—that of formulating standards under the draft law—was discretionary. The recent District of Columbia decisions, distinguishing between problems with the subject matter and the service of process, undercut these opinions. The Court follows the recent District of Columbia rulings.

in his work and less effective in carrying out his *proper* Constitutional functions, that might be good reason to limit his exposure to suits. But interference with Presidential action is not always so deleterious. Some interference of one branch with another is a part of the system of checks and balances by which each branch restrains the others. As Justice Brandeis observed:

> The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

*Myers v. United States*, 272 U.S. 52, 293 (1927) (dissenting opinion). Action not in accordance with the Constitution or the statutes is not merely action beyond the declared limits of authority; as the District of Columbia Circuit said:

> . . . [T]here is serious questions whether presidential actions inconsistent with congressional mandates constitute effective Government

*National Treasury Employees Union v. Nixon*, *supra*, 46. The interference may benefit the nation in the long run, and the Constitution looks to the long run.

A similar analysis applies to the contention that judicial action interferes with a President's electoral mandate. An electoral mandate may prescribe the policies to be followed in formulating regulations and implementing law or in recommending to Congress some changes in the law, but it provides no authority to brush aside the law and it especially provides none to brush aside Constitutional rights. The electoral mandate does not define the office or its powers, but merely instructs the occupant on how to perform the duties of office.[8] The occupant must work within the framework of the office. Judicial action re-

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[8]The government identifies the holder with the office. But the distinction between an office and its holder is a basic theme of the political history of the last several hundred years. The Court does not accept the government's view.

straining him to the confines of the office does not interfere with the genuine electoral mandate. A certain amount of interference with the President's activity may conceivably be desirable.

A corollary to that is the proposition, which the Court recognizes, that some lawsuits seek not to restrain actions which are in fact illegal, but to affect action that is in fact within the President's authority. If a court should render preliminary relief, such as a temporary restraining order or injunction, that would effectively stop the President from carrying out duties. The fear of a successful suit for damages would have a chilling effect on the President's vigorous performance of his functions. The potential effect on the President's action calls for safeguarding against the institution of suits which would affect him in his proper role. For that purpose the courts have developed devices such as the defense of official action. E.g., *Bivens v. Six Unknown Named Agents*, 456 F.2d 1339 (2d Cir. 1972); *Gregoire v. Biddle*, 177 F.2d 579 (2d Cir. 1949), *cert. den.*, 339 U.S. 949 (1950). The defense is not stated identically for each officer, and the range of activity swept within it varies considerably for each office. But the scope of the immunity is measured by the official's function, not by his identity. In *Barr v. Matteo* 360 U.S. 564, 573-4 (1950), the court said in this regard:

> It is not the title of his office but the duties with which the particular officer sought to be made to respond in damages is entrusted—the relation of the act complained of no "matters committed by law to his control or supervision," *Spalding v. Vilas, supra*, [161 U.S.] at 498,—which must provide the guide in delineating the scope of the rule which clothes the official acts of the executive officer with immunity from civil defamation suits.

The defense does not entirely insulate an officer from a lawsuit, but only protects him from certain ones. The judiciary decides whether he has its protection in a particular case. In making the decision, the judiciary starts from the premise that the official is exposed to the judicial process. Within the legal process he has a shield against

the plaintiff's complaint, but he does not have a shield against the legal process itself.

The legal process does require the time and attention of litigants. If numerous suits were brought against a President, and especially if they were suits for money damages, the President might find his personal time consumed by conferences with counsel, by furnishing information and discovery, and by similar matters. More than any other official, the President has to have the maximum use of his working time. For this reason the courts have protected the President's time by preventing suits from going forward if the litigant has adequate recourse by suits against other officials. But like the defense of official immunity, this doctrine is not armor against the legal process but merely a part of the legal process to be applied. The distinction between a defense within the legal process and a defense to the process stands forth in Chief Justice Marshall's opinion as a Circuit Judge in *United States v. Burr*, 25 Fed. Cases 30 (No. 14,692d) (C.C.D. Va. 1807). On trial for treason, Burr sought a subpoena duces tecum to compel the President to produce a letter written by General Wilkerson and to the President, Thomas Jefferson. The court considered the relation of the subpoena to the use of the President's time and rejected consumption of time as a defense to the simple issuance of a subpoena:

> If, upon any principle, the president could be construed to stand exempt from the general provisions of the constitution, it would be, because his duties as chief magistrate demand his whole time for national objects. But it is apparent that this demand is not unremitting; and if it should exist at the time when his attendance on a court is required, it would be shown on the return of the subpoena, and would rather constitute a reason for not obeying the process of the court than a reason against its being issued. . . . The guard, furnished to this high officer, to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a court after those subpoenas have issued; not in any circumstance which is to precede their being issued.

The subpoena was issued, and Jefferson did provide the letter. The court recognized the President's needs and interests by preventing disclosure of much of the letter in open court. Marshall required him to trust the judicial machinery, not to ignore it.[9] His decision refutes the government's theory that consumption of the President's time is a ground for immunizing him totally from the judicial process itself.

The President is not sovereign; the nation is. Through the Constitution the nation did not give sovereign power to the President. Nor does his political mandate constitute a grant of sovereign power. *Nixon v. Sirica, supra; United States v. Burr, supra.* The tenets of a republican form of government include surely the principles that officers are distinct from their offices and that officers are subject to the law. As Justice Jackson remarked, "With all its defects, delays, and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law. . . ." *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 655 (1952) (concurring opinion), quoted in *Nixon v. Sirica, supra.* He is not above the command of the law, and no express guarantee in the Constitution exempts him from the conventional legal process. In *National Treasury Employees Union v. Nixon, supra,* and in *Nixon v. Sirica, supra,* the courts declared him subject to that process.

But as the Court has noted, the judiciary has developed techniques for the President to avoid the harassment of useless lawsuits. The concept of justiciability restricts their subject matter; the defense of official action protects officers acting within their authority. In addition, because the President's time is uniquely precious, the courts have been reluctant to permit a suit against him if a suit can be brought against another official instead. In the recent

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[9]To some extent, the language in *Burr* is undercut by the fact that a United States Attorney had conceded that a subpoena could be issued. The United States Attorney had denied only the propriety of issuing a subpoena duces tecum. The distinction between the two forms if flimsy, and Marshall noted that.

cases holding him subject to legal process and rendering decisions against him, the courts have observed that the President was in fact indispensable. In *Nixon v. Sirica* the President had interposed himself by taking personal control over the property sought in a subpoena. The court could give no relief except relief against the President. In *National Treasury Employees Union v. Nixon*, the petitioner sought mandamus to compel performance of a duty imposed on the President and not delegated by him to any subordinate; again the only possible relief was relief against the President.[10] But in both cases the courts adverted to the policy against unnecessary suits. In *Nixon v. Sirica*, *supra*, 709, the court said:

> As a matter of comity, courts should normally direct legal process to a lower Executive official even though the effect of the process is to restrain or compel the President. Here, unfortuntely, the court's order must run directly to the President, because he has taken the unusual step of assuming personal custody of the Government property sought by the subpoena.

The District of Columbia Circuit underscored its distaste for unnecessary suits when it stated:

> There is also little doubt that if it were possible for NTEU to enforce its rights by naming a defendant additional to or in substitution of the President, this Court would exercise its discretion not to answer the question of whether the President is subject to mandamus by a federal court to perform a purely ministerial duty.

*National Treasury Employees Union v. Nixon*, *supra*, 35. Litigants have succeeded in keeping the President in a lawsuit only when no alternative slate of defendants was available.

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[10]The same was true in *Minnesota Chippewa Tribe v. Carlucci*, *supra*. Seeing no possible relief except relief against the President, Judge Green denied a defense motion to dismiss as to the President. However, the case has not proceeded to a decision on the merits, so far as the Court knows.

But in this action, a raft of defendants are present. The caption names twenty defendants besides Nixon, including two banks and a host of government officers. Since the activity that allegedly harmed Fonda necessarily involved persons besides Nixon, who could not possibly have committed the alleged torts alone, declaratory or injunctive relief or relief in the nature of mandamus will adequately protect Fonda if that relief runs against parties other than Nixon. In *Youngstown Sheet & Tube Co. v. Sawyer*, *supra*, the plaintiff obtained full relief against Presidential action by a suit against the subordinate implementing it. Fonda can obtain fully compensatory damages by pursuing the claims against other parties, some of which are obviously solvent and pecunious. Moreover, the United States itself may be vicariously liable under the Tort Claims Act[11] for torts committed by others in the conspiracy that allegedly operated. The plaintiff has not demon-

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[11] Conceivably, the actions by the alleged wrongdoers would be within the scope of their authority for the purposes of 28 U.S.C. § 2680 outside of the exceptions enumerated in 28 U.S.C. § 2630. Section 2680(h) does exclude claims such as assault, battery, false arrest, and malicious prosecution, but the alleged actions do not clearly fall within § 2680(h). As the Senate Government Operations Committee recently concluded, "[U]nder the Federal Tort Claims Act, Government tort liability for intentional conduct is unclear. For example, certain intentional torts such as trespass and invasion of privacy are not always excluded from Federal Tort Claims Act coverage." S. Report 93-588 (Nov. 29, 1973). This report is part of the legislative history behind P.L. 93-253, 88 Stat. 50 (March 16, 1974), which adds this language to § 2680(h):

> *Provided*, that with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising on or after the date of the enactment of this provision, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered

strated the need for having the President involved personally in this suit, and it appears that the plaintiff cannot demonstrate such need. This Court will dismiss, as to the President, any suit naming the President unless the party responsible for including him demonstrates that the President is indispensable, both legally and practically. He is not indispensable in this case, and the Court will dismiss the suit against him.

The plaintiff has argued for a stay of the action during the remainder of his tenure in office instead of a dismissal. Thereby the plaintiff hopes to keep the lawsuit alive and prevent the danger of the running of the statute of limitations. But the prolonged pendency of a suit can be just as damaging as the speedy prosecution of it. Lawsuits would pile up, evidence would disappear; and memories would grow stale, leaving the ex-President with a full-time job as litigant and with a handicap in conducting litigation. Obviously, this would be an intolerable burden, and the prospect of it would influence a President while in office. A stay of proceedings would not adequately protect the President.

The government's motion to quash the service of process is denied. Treating the "suggestion for dismissal" as a motion for dismissal of the action as to the President of the

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by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

This enactment was intended not merely to repeal the exception for most cases of the torts specifically listed in §2680(h), but also to clarify the status of torts not listed, such as invasion of privacy. "Obviously, it is the intent of the Committee that these border line cases under the present law, such as trespass and invasion of privacy, would be viewed as clearly within the scope of the Federal Tort Claims Act, if the amendment is adopted." S. Report 93-588. Although the new proviso applies by its own force only to cases arising after March 16, 1974, it may be a guide in interpreting the prior law about the non-listed forms. It is possible that the Government bears liability for the conduct behind Fonda's claims. The Court expresses no opinion on the matter.

United States, the Court grants that motion.[12] As against the President, the action is dismissed without leave to amend.

With its obvious political overtones, this case has the potential of attracting public attention. It would not be proper for such a case to be known by the name of a party no longer in it. The Court therefore strikes the name of Richard M. Nixon, President of the United States, from the caption. The case shall hereafter be designated "Fonda v. Gray, et al," the name of L. Patrick Gray being the one listed next in the caption.

In the event of a decision adverse to her, Fonda has requested a certification for an immediate appeal under 28 U.S.C. § 1292(b). The Court grants that request.

Dated May 23, 1974

/s/ _____

MALCOLM M. LUCAS
*United States District Judge*

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[12] The Court renders no opinion on whether the plaintiff could sue Nixon after he leaves office nor on the running or tolling of the statute of limitations. These questions are not before this Court. Nor does the Court express any opinion on whether President Nixon would be protected by the defense of official action.

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 73-1520-LTL(G)

ELMER DAVIS, PLAINTIFF,

*v.*

RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

**ORDER DISMISSING COMPLAINT AS TO CERTAIN DEFENDANTS**

Pursuant to Title 28 U.S.C. §636(b)(3), attached is the Report and Recommendation of the United States Magistrate who has reviewed the complaint and amended complaint filed herein for relief under the Civil Rights Act, together with the motion to dismiss as to various defendants, and the plaintiff's opposition there.

The Court has reviewed the foregoing and the objections to the Report and Recommendation of Magistrate Ralph J. Geffen and concurs with and adopts the findings and conclusions of the Report and Recommendation.

IT IS ORDERED that the motion to dismiss the amended complaint is granted as to Defendant Richard M. Nixon, President of the United States of America, and that the motion to quash the service of summons on said defendant, and to strike his name from all pleadings is denied, without prejudice to renewal at a later date.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order by United States mail, upon the plaintiff, upon La Foliette, Johnson, Horgan & Robinson, counsel for defendants Cork, Campbell and Franklin, and upon the United States Attorney, counsel for the remaining defendants.

DATED: June 18, 1974.

/s/ _____

LAWRENCE T. LYDICK
*United States District Judge*

**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

Civil No. 73-1520-LTL(G)

ELMER DAVIS, PLAINTIFF,

*v.*

RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS.

**REPORT AND RECOMMENDATION AS TO CIVIL RIGHTS COMPLAINT**

Plaintiff, a state prisoner, appearing *in forma pauperis* and without counsel, has brought this civil rights action for damages against (A) the President of the United States, Richard M. Nixon, (B) four of the presidential "advisors", "aides" and "consultants", John D. Ehrlichman, Egil (sic) Krough, E. Howard Hunt, and G. Gordon Liddy, and (C) three officials of the Beverly Hills Police Department, B. L. Cork, Bruce Campbell, and W. L. Franklin.

Jurisdiction is alleged under provisions of the civil rights acts, 42 U.S.C. §§1983, 1985 and 1986 [*Haines v. Kerner*, 404 U.S. 529 (1972);] via 28 U.S.C. §§1331 and 1343(3) and (4), and may also be present under the Fourth and Fifth Amendments. [cf. *Bivens v. 6 Unknown Named Agents*, 403 U.S. 388 (1971) via 28 U.S.C. § 1331(a).

An order was made by the United States Marshal for service of the original complaint upon the defendants without prepayment of fees. However, service has not been accomplished as to any of them except the last-named group, and in the case of defendant Nixon the United States Marshal for the District of Columbia declined to make service on the grounds that he had "no authority to serve the President", and that "the President of the United States is not amenable to service of process and is not subject to any court for the exercise of his powers whether constitutional or statutory, political or otherwise."

An amended complaint was subsequently filed. No order for service thereof has been made, and it has not been served on any of the defendants excepting defendants Cork, Campbell and Franklin, who have filed an answer thereto.

On September 24, 1973, a Notice of Motion was filed by the United States Attorney on behalf of defendant Nixon

(1) seeking that service of summons directed to defendant Nixon be quashed, and

(2) suggesting that the action be dismissed as to defendant Nixon.

An amended Notice of Motion to the same effect was filed by the United States Attorney on behalf of defendant Nixon on October 17, 1973. Although this preceded the filing of the amended complaint, an order was made by the Magistrate on November 17, 1973 that this motion remain on calendar. Hearing was had thereon on November 26, 1973. Plaintiff did not appear and was not represented, but did file opposition to the motion, presenting a well-drawn memorandum of points and authorities in support of his position.

The scope of the hearing was confined to an explanation by the United States Attorney of the legal grounds relied upon for his motion. They included the following points:

(1) A federal officer is not liable to suit under 42 U.S.C. §§1983 or 1985;

(2) The President is immune from civil suit for acts within the scope of his authority;

(3) There is no jurisdiction of the action because diversity of citizenship is not alleged.

Of these, (1) and (2) were specified in the notice of motion.

A great deal of research has been done as to the principle that the separation of power doctrine militates against the assertion of jurisdiction by the judicial branch over the person of the head of the Executive Branch. This Court has stated that principle in *Reese v. Nixon*, 347 F. Supp. 314 (C.D. Cal. 1972), affirmed and reversed, in parts,

#72-3070, unpublished Memorandum, May 3, 1974. Accord, *San Francisco Redevelopment Agency v. President Richard M. Nixon*, 329 F. Supp 672 (N.D., Cal. 1971); *National Association of Internal Revenue Employees v. Nixon*, 349 F. Supp. 18 (D.D.C. 1972); *Trimble v. Johnson*, 173 F. Supp. 651 (D.D.C. 1959).

An analysis of the first cause of action of the amended complaint, which, as a *pro se* pleading, is to be liberally construed [*Haines v. Kerner*, 404 U.S. 519 (1972)], indicates that it charges only defendants Cork, Campbell and Franklin with any conduct. The conduct complained of is that these defendants, under color of state and federal law, invaded plaintiff's right of privacy by publicly making false statements that plaintiff had confessed to burglary of the offices of a Dr. Lewis J. Fielding (the "Ellsburg burglary"), with intent to cause his false arrest and imprisonment and involve him in such "scandal", in violation of his rights under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution; as a result, plaintiff alleges, he was humiliated and sustained mental pain and suffering. (Amend. Complt., p. 1-p, 5, 1, 12.)

The second cause of action includes claims against *all* of the defendants. It designates defendant Nixon as the President of the United States, defendant John D. Ehrlichman as "Presidential Aide", and defendants E. Howard Hunt and G. Gordon Liddy as "Presidential Aides and Consultants"; the four last-named are described as "officials of the United States Government in an appointive capacity." (Amend. Complt., p. 5. 11, 15-19; p. 1, 1. 1-p. 2, 11. 1-6, 16-31.) All of the defendants are alleged to have acted under the color of state and federal law. (Amend. Complt., p. 3, 11. 8-11.)

The second cause of action, imperfectly drawn, clearly intends to charge a conspiracy by all defendants, directed at plaintiff, to make plaintiff a "scapegoat" "to cover for themselves in their own criminal acts of conspiracy to commit" the so-called "Ellsburg burglary" by "falsely accusing the Plaintiff of having 'confessed' to said crime; the

alleged intent was to thereby bring about the conviction of Plaintiff for the alleged commission of said crimes and to cover for the Defendant-Government officials' involvement in said crimes, in direct violation of the Plaintiff's Constitutional Rights as guaranteed under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. (Amend. Complt., p. 6, 1. 11-p. 7, 1. 5.)

In support of this broad claim, the second cause of action alleges that "Defendant Richard M. Nixon, the President of the United States of America, acting through and by his agents and representatives Defendant Egil Krough, E. Howard Hunt, and G. Gordon Liddy, and others under the guise of domestic security "conspired to commit the 'Ellsburg burglary' ", and in pursuance thereof defendants Hunt and Liddy, utilizing equipment supplied by the Central Intelligence Agency, committed the burglary. (Amend. Complt. p. 5, 1. 21-p. 6, 1. 10.)

He further claims that at a later date he was subsequently arrested and prosecuted for an unrelated burglary by defendant Franklin "and others", that defendant Franklin attempted to get plaintiff to admit to that burglary "and other unspecified burglaries in the Beverly Hills area" which plaintiff denies committing; that defendant Franklin testified against him at the preliminary hearing in that case and his testimony was based largely upon "an unsigned and manufactured confession", resulting in plaintiff's being bound over for trial. As a further result of defendant Franklin's alleged perjury "and conspiring to commit those crimes in consort with the Defendant Bruce Campbell, and others. . . in furtherance of . . . the conspiracy to make the Plaintiff the 'scapegoat' for the (Ellsburg burglary) and to bring about his conviction on (the unrelated burglary), the Plaintiff was convicted of (the unrelated burglary)." (Amend Complt. p. 7, 1. 6-p. 9, 1.6.)

Plaintiff alleges that as further overt acts in furtherance of "the herein complained of conspiracy" defendant Cork publicly accused plaintiff of confessing to the Ellsburg burglary a month after it occurred, stating that it al-

legedly occurred while plaintiff was looking for narcotics; and that David Nissen, "United States Prosecuting Attorney" in *United States v. Russo*, Crim. No. 9373, "in the Pentagon-Papers Trial", introduced into evidence in that case certain evidence relating to plaintiff "while withholding other equally relevant evidence. . . that would have proven that the Plaintiff had not committed the (Ellsburg burglary) . . . with the intent to make it appear that the Plaintiff had actually committed the said criminal offense in order to obstruct justice and have the Plaintiff convicted of the said crime . . . and/or in the alternative cast him in a bad light before the eyes of the public. . . ." (Amend. Complt., p. 9, 1. 7-p. 10, 1. 14.)

It is alleged that as a further act in furtherance of the "conspiracy", "Defendant Richard M. Nixon, President of the United States of America", and "John Ehrlichman, Presidential Advisor/Defendant" invited the presiding judge at the "Pentagon-Papers" trial to the Western White House for the purpose of offering him "the bribe of a position with the Federal Bureau of Investigation as its Director" with the "malicious intent of influening the outcome of the Pentagon Papers Trial" and "securing the conviction of Daniel Ellsburg and Anthony F. Russo" and "substantiating the Plaintiff's alleged involvement in the (Ellsburg burglary)." (Amend. Complt. p. 10, 1. 16-p. 11, 1. 4.)

Lastly it is charged that in furtherance of the alleged conspiracy defendants Cork, Campbell and Franklin falsely testified before the Los Angeles County Grant Jury in June 1973, regarding the "Ellsburg burglary", "in support of their statements and accusations previously made accusing the plaintiff of having confessed to the (Ellsburg burglary)." (Amend. Complt. p. 11, 11. 5-29.)

Plaintiff seeks substantial damages in this action, and demands a jury trial.

It is concluded that the amended complaint is, as to defendant Nixon, for conduct allegedly engaged in by him in his capacity as President of the United States, and that, at least as to this defendant, the amended complaint fails to

state a claim cognizable in a federal court. His entry into the conspiracy alleged was purportedly in the pursuit of "domestic security."

"It is not within the province of the courts to inquire into the policy underlying action taken by the political departments—Congress and the President—in the exercise of their conceded powers." The Consititution of the United States of America, Senate Doc. #39, 88th Congress, 1st Session, p. 524.

The President is "beyond the reach of judicial direction in the exercise of any of his powers, whether constitutional or statutory, political or otherwise," op. cit., at 553-54, citing *State of Mississippi v. Johnson* 71 U.S. 437 (4 Wall 475) (1867) [in which an injunction against enforcement by the President of an Act of Congress was denied.]

See however, *Scheuer v. Rhodes*, U.S. , April 24, 1974, in which the Supreme Court said:

> "Under the criteria developed by precedents of this Court, § 1983 would be drained of meaning were we to hold that the acts of a governor or other high executive officer has 'the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government.' *Sterling v. Constantin*, 287 U.S. 378, 397 (1932)."

In a recent unpublished opinion, the Ninth Circuit Court of Appeals said,

> "We do not reach the question whether the district court has power to assert jurisdiction over the President because we agree with the district court that no claim for relief has been or can be stated against the President under the doctrine of executive immunity explicated in *Barr v. Matteo* (1959), 360 U.S. 564 and *Scheuer v. Rhodes* (1974) U.S. . (See also *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics* (2d Cir. 1972) 456 F.2d 1339.)"

*Reese v. Nixon*, #72-3070, Memorandum, May 3, 1974, affirming and reversing, in parts, 347 F. Supp. 314 (C.D. Cal. 1972).

On the other hand, by common law principles, a subordinate executive officer is personally liable under the ordinary law for any act done in excess of authority, op. cit., at 555, citing *Little v. Barreme*, 2 Cr. 170 (1804); *United States v. Lee*, 106 U.S. 196 (1882); *Spaulding v. Vilas*, 161 U.S. 483 (1896). The federal district court has jurisdiction to entertain such suits [*Bell v. Hood*, 327 U.S. 678 (1946)], and may now award damages for violations of constitutional rights, in appropriate cases [*Bivens*, supra], unless there is official immunity for the acts complained of. [Cf. *Reese v. Nixon*, 347 F. Supp. 314, 317-18 (C.D. Calif. 1972), affirmed in part and reversed in part, in an unpublished opinion (9th Cir. May 3, 1974).]

Dismissal of the complaint as to the President is therefore appropriate. Holding the President liable for damages for his past official conduct would be as much of an interference with the Executive Branch as would be the enjoining or mandating of future acts.

Granting of the motion to quash the service of process is inappropriate, since there has been no service made upon him. No good cause is shown for striking the name of defendant Nixon from the pleadings, and no authority or argument thereon has been put forward by the moving party. Since defendant Nixon's name is the first to appear, it would cause some confusion in court records to now strike that name from all pleadings. If this matter were to come to trial before a jury, good cause might then exist, and the motion could then be renewed.

IT IS THEREFORE RECOMMENDED that the motion to dismiss the complaint be granted as to defendant Richard M. Nixon, President of the United States of America, and that the motion to quash the service of summons on defendant Nixon and to strike his name from all pleadings be denied, without prejudice.

DATED: May 24, 1974

/s/ _____

RALPH J. GEFFEN
*United States Magistrate*

# UNITED STATES DISTRICT COURT
# SOUTHERN DISTRICT OF CALIFORNIA

Civil No. 75-4-T

PETER BOHMER, PAULA THARP, PLAINTIFFS,

*v.*

RICHARD MILHOUS NIXON, ET AL., DEFENDANTS.

## OPINION AND ORDER

Plaintiffs, Peter Bohmer, formerly a professor at San Diego State University, and Paula Tharp, formerly a staff member of the San Diego Street Journal, brought this lawsuit in January 1975. Plaintiffs are self-styled critics of the American form of government, and of the Nixon Administration.

Plaintiffs allege a broad, nationwide conspiracy among present and former federal and local officials, and members of a right-wing paramilitary group known as the Secret Army Organization. Federal officials, who include then President Nixon, are said to have implemented, approved, or condoned various plans and programs, the purpose and effect of which were to suppress dissident activities of such groups as the "New Left" or of persons sharing the views of the plaintiffs. Examples of these programs include "Cointel," the "Huston Plan" the "White House Enemies List," the "Liddy Plan," and so forth. Generally, the acts alleged in furtherance of the conspiracy or conspiracies are local in nature, and encompass the conduct of the F.B.I. the C.I.A., their informants, and numerous agents of the San Diego County Sheriff's Office and the San Diego City Police Department, among others. The acts themselves include: a shooting, telephonic threats, vandalism, fire-bombings, warrantless searches, and a bad faith criminal prosecution which resulted in a felony conviction.

Plaintiffs allege the conspiracy or conspiracies and the overt acts constitute infringements of their civil rights under the First, Fourth, Fifth, Sixth, Eighth, Ninth,

Tenth, and Fourteenth Amendments, as well as under the Civil Rights Acts [42 U.S.C. §§ 1983, 1985, 1986] and the Omnibus Crime Control and Safe Streets Act of 1968 [18 U.S.C. §§ 2510–2520]. As redress for these alleged wrongs plaintiffs seek an injunction, a declaratory judgment and money damages of 5.3 million dollars. From former President Nixon, plaintiffs seek the same relief, although at oral argument they recognized the mootness problems, and therefore concentrated on the money damage aspect of the case against him. This Court proceeds on the assumption money damages is the primary form of relief sought.

Mr. Nixon, through private and government counsel in separate motions, moves to dismiss the claims against him on the ground that the discretionary acts of a Chief Executive present non-justiciable questions over which this Court has no jurisdiction to review. Rather than the traditional grounds of justiciability, Mr. Nixon really urges the contention that he is immune from suit for acts done while President.

I.

To the extent that it is contended, this Court must reject the argument that a President is absolutely immune from judicial relief, whatever the form of that relief, and whatever a President's conduct. *National Treasury Employees Union v. Nixon*, 492 F.2d 587 (D.C. Cir. 1974); *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973); *cf. United States v. Nixon*, 418 U.S. 683 (1974).

II.

What remains is an argument grounded in concepts of separation of powers to the effect that this Court should not retain jurisdiction over the action against Mr. Nixon under the circumstances presented in this case. The contention is premised on the notion that the judiciary should limit the circumstances in which it will afford judicial relief to a plaintiff in an action against the President. The purpose of judicial self-restraint is to avoid needless constitu-

tional adjudications and direct confrontations between the judicial and executive branches of government.

There are certain plausible policy justifications to support what amounts to a distinction in treatment between a President and any other executive officer. Courts recognize the interests of the nation are generally best served if a President is not required to divert precious time to the defense of his every judgment or decision in a court of law. More importantly, it is desirable to foster a President's independence of thought and judgment, rather than to routinely subject his decisions to judicial scrutiny. *See generally Nixon v. Sirica, supra,* at 750–752 (MacKinnon, J., concurring and dissenting opinion). Implicit in these considerations is the practical recognition that the Chief Executive acts through his agents, and in many circumstances, delegates almost completely the performance of certain duties.

Generally, courts have recognized that the judiciary may give mandamus relief where the executive function is ministerial or perfunctory in the sense that a specific action is commanded by a statute or by the Constitution. *Mississippi v. Johnson,* 71 U.S. (4 Wall) 475 (1867); *Marbury v. Madison,* 5 U.S. (1 Cranch) 137 (1803). Yet no case has been cited or found in which this relief was actually given against a President. These same cases acknowledge that judgmental or discretionary acts of a President are not reviewable by the judiciary.

Recent Presidential cases have mollified the absoluteness of the latter proposition, recognizing that in certain, limited circumstances the judicial branch must determine directly, the legality of acts of a Chief Executive. *See, e.g., National Treasury Employees Union v. Nixon, supra; Nixon v. Sirica, supra.* In the *National Treasury* case, the Court of Appeals found that the Federal Pay Comparability Act, 5 U.S.C. § 5301 et seq., required the President to perform a ministerial act, the actual performance of which had not been delegated. Because the requirement to act was deemed ministerial, mandamus was held to be the proper remedy. President Nixon contended

he was immune from the lawsuit under the separation of powers doctrine, as he contends here. But the court rejected the contention, concluding that the President was a necessary or indispensable party to the action in the sense that without his presence plaintiffs would be without remedy. Similarly, in *Nixon v. Sirica, supra,* the Court of Appeals affirmed the district court's denial of President Nixon's motion to quash a Grand Jury subpoena for the White House tapes. The court found that since the tapes were in the personal possession of the President, no other party could comply with the subpoena. Both courts expressed reluctance to directly confront or interfere with the Chief Executive, but neither was willing to exalt the generalized policies supporting judicial non-interference in the particular circumstances where a judicial remedy would be denied altogether or where the Grand Jury process would be thwarted.

However, where the same quality of necessity has not been demonstrated, other courts have declined to retain jurisdiction over a President. *See, e.g., Reese v. Nixon,* 347 F.Supp. 314 (C.D. Cal. 1972) rvsd. in part on other grounds No. 72-3070 (9th Cir. May 9, 1974); *Atlee v. Nixon,* 336 F.Supp. 790 (E.D. Penn. 1972); *San Francisco Redevelopment Agency v. Nixon,* 329 F.Supp. 672 (N.D. Cal. 1971); *Suskin v. Nixon,* 304 F.Supp. 71 (N.D. Ill. 1969).

Here, plaintiffs have alleged a conspiracy or a series of conspiracies, in which there are fifty-six other co-conspirators named as defendants, and more are said to exist. Plaintiffs seek compensation for what they characterize as the wrongs done to them by Mr. Nixon while President, but his compensation—judicial relief—can be afforded from any of the other named executive officials who are later found liable. Plaintiffs are entitled to the opportunity to obtain judicial relief, and this will not be precluded. They are not, however, entitled to monetary relief from a former or a sitting President absent a clear showing of his indispensability to the lawsuit. Moreover, the correctness of Mr. Nixon's judgments as President

may be evaluated as a by-product of determining the legal rights of the remaining defendants, as has taken place in other cases. *See, e.g., United States v. United States District Court*, 407 U.S. 297 (1972); *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579 (1952); *Zweibon v. Mitchell*, 516 F.2d 594 (D.C. Cir. 1975). Finally, this Court deems unpersuasive plaintiff's argument that the policies supporting judicial non-interference with Presidential decisions do not apply in a lawsuit against a former President, as here. If in the first instance one accepts the salutary principles of not giving judicial relief against a sitting President unless some clear showing of necessity is made—which this Court does—then it necessarily follows that plaintiffs should not be allowed to do indirectly what they could not have done directly, where no showing of necessity has been made. This lawsuit could not have been maintained against Mr. Nixon as an incumbent President; thus, no greater right to bring this lawsuits should now accrue to plaintiffs.

III.

For the foregoing reasons, the claims against Mr. Nixon must be dismissed, with prejudice. This Court finds that the ultimate termination of the litigation will not be advanced by the granting of an interlocutory appeal from this ruling; therefore, plaintiffs' request for this relief must be denied.

IT IS SO ORDERED.

DATED: June 16, 1976.

/s/

HOWARD B. TURRENTINE,
*United States District Judge*

COPY TO:

See attached list

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 69 CR 180

UNITED STATES OF AMERICA

*v.*

DAVID T. DELLINGER, ET AL., DEFENDANTS

Before Judge Hoffman,
Friday, February 20, 1970,
10:00 o'clock a.m.

Resumed pursuant to adjournment.

Present:
Mr. Foran
Mr. Cubbage
Mr. Schultz
Mr. Epstein
Mr. Connolly
Mr. Kunstler
Mr. Weinglass

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THE COURT: After the indictment in this case was returned, but before trial, the defendants moved for an order directing the government to disclose to them any and all logs, records and memoranda of any electronic surveillance directed at any defendant or any unindicted coconspirator, or upon the premises thereof, and for an evidentiary hearing to determine whether any of the evidence upon which the indictment was based or which the government intended to use at the trial was tainted by such surveillance.

In response, the government admitted that the conversations of certain of the defendants had been overheard during the course of electronic surveillance, but contended that such surveillance was not unlawful, and that disclo-

sure of the record of such surveillance was not required. The government disclosed to the defendants records of certain surveillance operations and submitted to the court sealed exhibits containing the records of other surveillance operations containing the records of other surveillance operations for in camera examination by the court, pursuant to an affidavit of the Attorney General of the United States which stated that the disclosure of the latter exhibits would endanger the national security of the United States.

As the record reveals, the court determined, or, rather, decided to defer determination of this matter until after trial. Five of the original eight defendants having been found guilty by the jury under single counts of the indictment, it now is necessary to deal with this matter.

The Supreme Court of the United States has recently held that where electronic surveillance is found to have been unlawful and if a defendant is found to have standing to object to that surveillance, the government must disclose to him the records of overhead conversations which it is not entitled to use in building its case against him. Alderman v. United States, 394 U.S. 165, 180-85, 1969.

Before such disclosure is required, there must be a finding that the surveillance was unlawful and that the defendant has standing to object. Clearly the defendants here have no standing to object to surveillance directed against their co-defendants or against their co-conspirators as expressly held in Alderman, 394 U.S. at 171-76.

It is equally clear, however, that under Alderman each of the convicted defendants has the requisite standing with respect to surveillance in which his own conversations were overheard.

There remains the question of [whether] the surveillance was lawful, since a finding by the court that the surveillance was lawful would make disclosure and further proceedings unnecessary. Giordano v. United States, 394 U.S. 310, 313, 1969.

The determination of the legality of the surveillance can appropriately be made in ex parte in camera proceedings. Giordano v. United States, 394 U.S. at 314. Justice Stewart, concurring. United States v. Battaglia, 410 F.2d 279, 7th Circuit, 1969.

The threshold question, then, is whether the electronic surveillance, during the course of which the conversations of the defendants were overheard, was or was not lawful. The Fourth Amendment to the Constitution of the United States prohibits "unreasonable searches and seizures," and therefore under the exclusionary rule of Weeks vs. United States, 232 U.S. 383, 1914, evidence seized from a defendant in violation of his Fourth Amendment rights may not be used at trial.

Fruits of such unlawful searches are excluded as well. Silverthorne Lumber Company vs. United States, 251 U.S. 385, 1920.

And "because the amendment now affords protection against the uninvited ear, oral statements, if illegally overheard, and their fruits are also subject to suppression. Silverman vs. United States, 365 U.S. 505, 1961; Katz vs. United States, 389 U.S. 347, 19674.

Moreover, the exclusionary rule applies to violations of Section 605 of the Communications Act of 1934, 47 U.S.C. Section 605, which prohibits the interception and divulgence of telephone conversations without the authorization of the sender. Nardone vs. United States, 302 U.S. 379, 1937. Nardone vs. United States, 308 U.S. 338, 1939.

It is the position of the Government that while the surveillance in question here may not in all instances comply with the broad rules enunciated by the foregoing cases, it should be declared lawful on the ground that there is an exception from the warrant requirements for surveillance authorized by the President or the Attorney General for the purpose of "national security" investigations. An affidavit of the Attorney General submitted to the court with the sealed exhibits states that conversations of the defendant "were overheard by Government agents who were monitoring wiretaps which were being employed to

gather foreign intelligence information, or to gather intelligence information concerning domestic organizations which seek to use force and other unlawful means to attack and subvert the existing structure of the Government.

"The records of the Department of Justice reflect that in each instance the installation of wiretaps involved had been expressly approved by the then Attorney General." The defendants argue that there is no such "national security exception" to the search and seizure rules and that the surveillance carried out by the Government was therefore unlawful. This issue was fully briefed and argued by counsel for the respective parties before trial and I am now prepared to decide it.

The Supreme Court has not addressed itself to the question of whether authorization by other than a magistrate—such as by the President or by the Attorney General—would satisfy the Fourth Amendment in a situation involving national security. The question was specifically reserved in Katz vs. United States, 389 U.S. 347, 358, Note 23.

The issue was also raised though not decided, in United States v. Stone, No. 68 CR 1233, an unreported memorandum of decision, United States District Court for the District of Columbia, September 15, 1969. Mr. Justice White concurring in Katz said:

> " . . . there are circumstances in which it is reasonable to search without a warrant . . . Wire tapping to protect the security of the nation has been authorized by successive Presidents . . . We should not require the warrant procedure and the magistrate's judgment if the President of the United States or his chief legal officer, the Attorney General, has considered the requirements of national security and authorized the electronic surveillance as reasonable."

Mr. Justice Douglas, joined by Mr. Justice Brennan, also concurring in Katz, expressed contrary views. 389 U.S. at 359-60.

Thus, aside from the views expressed by three Justices, the question at hand is one of first impression. The pur-

pose of the Fourth Amendment proscription of unreasonable searches and seizures is to safeguard the privacy and security of individuals against arbitrary invasion by government officials, and, except in certain carefully defined classes of cases, a search is "unreasonable" unless it has been authorized by a valid search warrant. Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523, 528-29, 1967.

There are, however, certain situations in which a warrant is not required and in assessing whether the public interest demands creation of a general exception to the Fourth Amendment warrant requirement, the question is whether the authority to search should be evidenced by a warrant. Camara v. Municipal Court, 387 U.S. at 533.

In making that assessment, it is appropriate to bear in mind the purpose that is served by requiring a warrant before a search may be conducted. The function of the warrant requirement for searches is the same as for arrests: to insure that the deliberate impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause. Wong Sun v. United States, 371 U.S. 471, 481-82, 1963.

In most criminal investigations, it is both appropriate and feasible for a judicial officer, such as a magistrate, to make an independent determination of whether there is probable cause for a search—or to conduct electronic surveillance. It does not necessarily follow, however, that in all cases this warrant procedure should be required. The gathering of intelligence vital to the preservation of national security, whether deemed necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, or to protect the United States against a clear and present danger to the structure or the existence of its Government, involves considerations of involved factual and policy matters that are uniquely within the competence of the executive branch of the Government. For that reason I agreee with the conclusion reached by Judge Ingraham of the Southern District of

Texas, in the case of the United States vs. Clay, criminal number 67 §94, a memorandum opinion, July 14, 1969, from which I quote:

> ". . . it is the executive, not the judiciary, which alone possesses both the expertise and the factual background to assess the reasonable-practical standpoint, it would be ridiculous to place on a United States Commissioner the burden of deciding what is and is not a threat to national security. The court does not believe the judiciary should question the decision of the executive department that such surveillances are reasonable and necessary to the protection of the national interest."

There have been other cases upon which courts have deferred to the executive in matters, the determination of which is more suitably left to that branch of government. In C&S Airlines, Incorporated vs. Waterman Steamship Corporation, 333 U.S. 103, 111, 1948, the Supreme Court said "The President has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret."

And the Court said in Coleman vs. Miller, 307 U.S. 433, 455, 1939:

> "There are many illustrations in the field of foreign relations where there are considerations of policy considerations of extreme magnitude and certainly. . . . incompetent to the examination and decision of a court of justice."

See also Dakota Central Telephone Company vs. South Dakota, 250 U.S. 163, 1919.

Thus, because the matter of when electronic surveillance is reasonably necessary to investigations carried out to protect the national security is a matter not suitable for a judicial determination, but is rather best left to the authorization of the President or his chief legal officer, the Attorney General, I conclude that electronic surveillance

in national security cases is not subject to the warrant requirements of the Fourth Amendment.

The remaining question is whether electronic surveillance conducted solely for the purpose of gathering foreign intelligence information, or to gather intelligence information concerning domestic organizations which seek to use force and other unlawful means to attack and subvert the existing structure of the Government, violates Section 605 of the Federal Communications Act.

There, like the Constitutional issue, is an "open question" not yet decided by the Supreme Court. United States vs. Stone, No. 68 CR 1233, District Court of the District of Columbia, an unreported memorandum of decision, September 15, 1969.

In Nardone vs. United States, 302, U.S. 380, 1937, the Court held that wiretap evidence acquired by the Federal officers was inadmissible at a criminal trial under Section 605.

The Government takes the position that Section 605 does not limit the power of the President to authorize wiretapping for the purpose of gathering intelligence information to preserve the national security. The merit of this position is evidence of the fact that nothing in the legislative history of the Federal Communications Act indicates that Congress intended to prohibit electronic surveillance authorized by the Attorney General for such purposes. The Nardone case reflects no awareness of the problem of the need to gather intelligence information and the need to keep those activities secret. In view of the President's primary responsibility for preserving the national security, it would be unreasonable to conclude that either the Congress in enacting Section 605 or the Supreme Court in deciding Nardone, obtain information vital to the fulfillment of his responsibilities. This interpretation of Congressional intent is borne out by the recently-enacted Omnibus Crime Control and Safe Streets Act of 1968, which specifically exempts from its own restrictions and those of the Federal Communications Act and wiretapping authorized pursuant to the Constitutional

power of the President to "protect the nation against actual or potential attack or other hostile acts of a foreign power to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security against foreign intelligence activities, and to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government."

I have carefully examined the surveillance records and the authorization memoranda contained in the sealed exhibits submitted by the Government to the court in camera and I find that the electronic surveillance that was conducted was expressly authorized by the Attorney General for the purpose of gathering intelligence information.

For the reasons I have just set forth, I therefore conclude that the surveillance was lawful and consequently not subject to the disclosure requirements of Alderman vs. United States.

Mr. Clerk, the motion of the defendants for disclosure of electronic surveillance records and for hearing to determine whether their conviction was tainted by such surveillance will be denied.

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

No. KC-CR-1204

UNITED STATES OF AMERICA, PLAINTIFF,

*v.*

FELIX LINDSEY O'NEAL a/k/a PETE O'NEAL, DEFENDANT.

## TRANSCRIPT OF PROCEEDINGS

Appearances:

HON. ARTHUR J. STANLEY, JR.,
*Chief Judge, Presiding.*

For the Plaintiff:

MR. ROBERT ROTH,
United States Attorney,
Kansas City, Kansas.

MR. JAMES A. FUSATERI,
Assistant U.S. Attorney,
Kansas City, Kansas.

For the Defendant:

MR. AUSTIN F. SHUTE,
845 Law Building,
Kansas City, Missouri.

MR. MICHAEL LERNER,
747 Ann Avenue,
Kansas City, Kansas.

Harold Pittell,
*Official Reporter.*

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BE IT REMEMBERED, on the 1st, 2nd and 3rd days of September, 1970, the above matter coming on for hearing before the Honorable Arthur J. Stanley, Jr., Chief Judge of the United States District Court for the District of Kansas.

**MORNING SESSION, TUESDAY, SEPTEMBER 1, 1970**

(Whereupon, the following proceedings were had OUT OF THE PRESENCE AND HEARING OF THE JURY PANEL:)

THE COURT: We will be on the record in Case No. KC-CR-1204, United States, vs. Felix Lindsey O'Neal. I understand that counsel had some matter to take up with the Court and I want to take this opportunity, first, because this might be of some significance to counsel in the voir-dire examination, the defendant's motion to require the government to elect between Counts 1 and 3 will be denied since the evidence required to establish the one count, the charge in the one count, would differ from that to be charged in the other.

I have examined in camera the logs of the telephone, intercepted telephone conversations, and I find that all of the interceptions were after the effective date of the Crime Control Act and all were after the date of January 16, 1969, the date the offense is alleged to have been committed and that none of them have any significance with respect to the offenses charged in the three counts in this case and that all were authorized by the President acting through the Attorney General. The case of Alderman versus United States, 394 U.S. 165, has to do with disclosure to the defense of intercepted communications illegally obtained and I hold here and rule that all of the interceptions, the wire taps, in this case, those logs of which were submitted to the Court for in-camera examination, were legally obtained within the inherent constitutional powers of the President because of his responsibility to gather intelligence information having to do with matters vital to national security and in connection with that, I cite the case of United States versus Clay, Fifth Circuit, not yet published, so far as I know, an opinion handed down July 6, 1970, and United States versus O'Baugh, a decision of the District Court of the District of Columbia, I think not published, case in that court numbered CR-1529-67, the decision being dated September 30, 1969. So the logs of the interceptions will be sealed by the Court and re-

turned to the Attorney General where in the words of Attorney General Mitchell's affidavit, they will be retained under seal so they may be submitted to any appellate court that may review this matter.

Now, if you will forgive me for taking up my matters before I ask you what it was that you wished to take up with the Court, I would ask the defense at whatever time you feel appropriate, Mr. Shute, to assist me in preparation of the instructions, to advise me whether you claim that any of the exceptions under Section 922(a)3 are applicable here, that is, [151] whether you will contend that the defendant is a licensed importer, dealer, et cetera, whether he obtained the gun charged, if he did obtain it, as a bequest or through intestate succession or whether the purchase was authorized under Missouri law or whether it was loaned, the weapon was loaned, or rented for lawful sporting purposes or whether it was lost—whether he had lost a gun in Kansas while engaged in a match or in hunting activities.

MR. SHUTE: Yes, yes.

THE COURT: As I understand, I believe this to be the rule, in this circuit at least, the burden is on the defendant to bring himself within any exception in the statute. If there is any such exception urged, I'll have to prepare to instruct on it.

MR. SHUTE: Are you asking me for that now, Your Honor?

THE COURT: Now or whenever you feel that it is appropriate to tell me. I'll be working on the instructions probably nights.

MR. SHUTE: The only possible exception, Your Honor, would be such a purchase in the State of Missouri would be lawful.

THE COURT: Do you have—

MR. SHUTE: I frankly have tried to see

# SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL DIVISION

Criminal No. 58942-71

UNITED STATES

*v.*

BRADFORD J. LYTTLE

## MEMORANDUM OPINION

After the indictment[1] in this case was returned, but before trial, the defendant moved, *inter alia*, for an order directing the government to disclose to him any and all logs, records and memoranda of any electronic surveillance directed at the defendant, and for a pre-trial evidentiary hearing to determine whether any of the evidence upon which the indictment was based or which the government intended to use at the trial was obtained by such surveillance.[2]

In response, the government admitted that certain conversations of the defendant had been overhead during the course of electronic surveillance, but contended that such surveillance was not unlawful, and that disclosure of the records of such surveillance was, therefore, not required. The government admitted, for this Court's *in camera* examination, a sealed exhibit containing the records of the surveillance. I have examined that *in camera* exhibit. In an affidavit of the Attorney General of the United States, accompanying the exhibit, he stated that:

> "Said electronic surveillances were authorized by the President of the United States, acting through the

[1] Defendant has been charged with violating Title 22 of the Code of the District of Columbia, § 505(a), 505(b) and 502.

[2] In his Motion, defendant also requested a number of other orders. *Eg.*, an order dismissing the indictment and an order suppressing illegally obtained evidence. For reasons to be stated, it is unnecessary to recount in full here all of the relief requested by the defendant in his motion.

> Attorney General, in the exercise of his authority relating to the national security as set forth in 13 U.S.C. §2511(3). My authorizations for such surveillances were in response to the requests of the Director of the Federal Bureau of Investigation, which requests were considered in conjunction with all of the foreign and domestic intelligence available to the Executive Branch of the Government.
>
> I certify that it would be a practicable impossibility to submit to the court all of the facts, circumstances, and other considerations upon which each authorization was based. I further certify that it would prejudice the national interest to disclose the particular facts contained in the sealed exhibit and concerning the surveillances other than to the court, *in camera*."

The issue to be decided is whether or not the surveillance was lawful. Having considered the sealed exhibit, the affidavit of the Attorney General, and the arguments of counsel, this Court finds for the following reasons that the surveillance was lawful,[1] and, that, accordingly, disclosure to the defendant is not required. *Giordano* v *United States*, 394 U.S. 310, 313 (1969).

In a recent decision, the Supreme Court specifically reserved the very question I decide today:

> "Whether safeguards other than prior authorization by a magistrate would satisfy the Fourth Amendment in a situation involving the national security is a question not presented by this case. *Katz* v *United States*, 389 U.S. 347, 358, n.23 (1967)."

After considering this question, the Court is compelled to agree with Mr. Justice White that:

> "We should not require the warrant procedure and the magistrate's judgment if the President of the United States or his chief legal officer, the Attorney General, nor considered the recruitments of national

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[1]The determination of the legality of the surveillance can appropriately be made in *in camera* proceedings. *Giordano v. United States*, 394 U.S. 310, 314. (Justice Stewart, concurring.) see also *United States* v *Battaglia*, 420 F.2d 279 (7th Cir., 1969), and *Taglianetti* v *United States*, 394 U.S. 316, 317.

security and authorized electronic surveillance as reasonable." (389 U.S. at 364). (Concurring opinion).

The Supreme Court has held that electronic surveillance is a search and subject to the requirements of the Fourth Amendment, which provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The first question, then, to be resolved is whether or not the Fourth Amendment requires a warrant in all circumstances. The Supreme Court has recognized several situations where the warrant requirements may be dispensed with. *McDonald* v *United States*, 335 U.S. 451 (1948); *Brinegar* v *United States*, 338 U.S. 160 (1949); *Carroll* v *United States*, 267 U.S. 132 (1925); *Cooper* v *California*, 386 U.S. 58 (1967); *Warden* v *Hayden*, 387 U.S. 294 (1967); *Terry* v *Ohio*, 392 U.S. 1 (1968); *Colonnade Catering Corp.* v *United States*, 397 U.S. 72 (1970); *Chambers* v *Maroney*, 399 U.S. 42 (1970).

> ". . . what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures . . .,"

*Elkins* v *United States*, 364 U.S. 206, 222 (1960), and a reasonable and lawful search is one where it would be unreasonable to require a warrant.

The President and the Attorney General, as his agent, are in a unique position to assess the needs of the national security. They have acccess to a wide range of classified and sensitive information. They are constantly called upon to analyze that information and to render difficult decisions on the course of action to take. It seems unreasonable to the Court to require the Executive to risk the compromise of sensitive information and to submit decisions affecting the national security to individuals whose

experience is remote from this field.[1] Such a procedure can only serve to frustrate the Executive's ability to protect the national security. In situations such as this, the protection of individual rights afforded by the judicial warrant must defer to the need to protect the national security. cf., *Camara* v. *Municipal Court*, 387 U.S. 523, 533-537 (1967).

The practice involved here—the conduct of intelligence-gathering electronic surveillance in national security situations—has been engaged in for at least 30 years by successive Presidents. In the Omnibus Crime Control and Safe Streets Act of 1968, Congress recognized this practice and specifically exempted it from the statutory procedures for obtaining a warrant for electronic surveillance, in 18 U.S.C. 2511(3). As the Supreme Court recognized in *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, 77 (1979):

> ". . . Congress has broad authority to fashion standards of reasonableness for searches and seizures."

Both Congress and the Executive have concluded that a warrant is not required in this area, and this Court is compelled to agree.

For all of the foregoing reasons, this Court is of the opinion that the surveillances involved in this case are lawful. Accordingly, defendant's Motion for disclosure, suppression of evidence, and dismissal of the indictment is denied.

s/ S. THOMPSON
JUDGE
1/12/72

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[1] The Court agrees with the conclusion reached by Judge Ingraham of the Southern District of Texas, in the case of the *United States* v *Clay*, Criminal No. 67 H 94, memorandum opinion, July 14, 1969:

" . . . It is the executive, not the judiciary, which alone possesses both the expertise and the factual background to assess the reasonableness of such a surveillance. From a purely practical standpoint, it would be ridiculous to place on a United States Commissioner the burden of deciding what is and is not a threat to national security. The Court does not believe the judiciary should question the decision of the executive department that such surveillances are reasonable and necessary to the protection of the national interest.

## DEPARTMENT OF JUSTICE

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### REMARKS OF ATTORNEY GENERAL JOHN N. MITCHELL BEFORE THE KENTUCKY STATE BAR ASSOCIATION

Cincinnati, Ohio
April 23, 1971

Tonight I want to discuss two fundamental American rights: The individual's right of privacy and the people's right to preserve their form of Government.

Americans cherish their right of privacy, and they react strongly when they think it is threatened. At the outset, therefore, I want to speak candidly about recent efforts to frighten Americans into the conviction that their privacy is in jeopardy from an agency of their own Government. Specifically I refer to charges by a certain Senator and a certain Congressman against the Federal Bureau of Investigation and J. Edgar Hoover.

Let me set the record straight here and now.

*Charge No. One:* On April 14 the Senator made a lengthy speech claiming that the FBI makes "general political surveillance" of members of the Senate. He based this startling conclusion on the fact that FBI representatives had attended an Earth Day Rally last year where the Senator had been one of the speakers.

The FBI does *not* conduct general political surveillance of Senators, Congressmen or any one else. The reason the FBI attended the rally had nothing to do with the Senator. They were there only to observe certain persons whose known records indicated the possibility of violent or unlawful conduct. Indeed, one such person—who shared the speakers' platform with the Senator—was out on bail at the time under Federal conviction for inciting to riot. Let me ask you: If the FBI trailed a suspect to a ball game of

the Cincinnati Reds, would Johnnie Bench have reason to think he was under surveillance?

The plain fact is that the Senator was not under surveillance and he knew he was not under surveillance. Yet he twisted the facts to make a political headline, and he owes an apology and a retraction to the FBI and Mr. Hoover.

*Charge No. Two:* On April 5 the Congressman stated flatly and unequivocally that the FBI "taps telephones of members of this body and members of the Senate"—and he later said he had "proof positive" to support his charges.

He even had the audacity to compare the FBI to Hitler's Gestapo.

His unproven charges were widely circulated, and he was repeatedly challenged by his colleagues and others to produce proof. Day after day he refused to do so. Yesterday he finally took the floor of the House and made a lengthy speech. It was full of adjectives, but not one iota of proof of the reckless charges he had made. Instead, it turned out that he thought he heard interference on his phone at home and suspected it was being tapped. He had it checked by the telephone company, which reported to him that his phone had not been tapped. The Congressman stated that the phone company always denies a tap that has been made by the FBI, so he said this proved his point. When "no" means "yes," I am reminded of the type of hypochondriac who insists he is sick, regardless of the doctor's assurances. The Congressman has been afflicted by a new type of paranoia—called *Tapa*noia—the belief that your telephone is being tapped.

I repeat what I said at the time: The FBI has not tapped the telephone of any member of the House or Senate—now or in the past. And the Congressman also owes a full retraction and apology to Mr. Hoover and the FBI.

I do not want to mislead you into thinking there have been no investigations of Congressmen. Where there is probable cause to believe a Federal crime has been committed, the FBI has a duty to obtain evidence. I am happy

to add that with two or three possible exceptions, members of Congress agree that they are entitled to no special immunity from the normal process of law. On rare occasions over the years, a member of Congress has indeed been the subject of normal investigative procedures—but not wiretapping—when the evidence indicated that such procedures were appropriate and necessary.

But with regard to the charges of general surveillance and wiretapping of Congressmen, those who are trying so hard to discredit the FBI for their own political purposes can't come through with the facts. All they have come up with is confirmation that the FBI is carrying out its statutory duties in the manner that the American people would want them carried out.

Now let us move from the realm of fantasy to the real world of fact. As you know, the whole question of electronic surveillance has been evolving in the courts for many years. In the *Katz* decision of 1967, the Supreme Court held for the first time that the Fourth Amendment protects private conversations as well as private premises from "unreasonable searches and seizures." It also held that a prior court order is necessary for electronic surveillance. But it left open the question of whether such a court order is necessary in a situation involving the national security.

Taking this cue, Congress enacted some careful wiretapping legislation in 1968. Wiretapping by private parties was outlawed, but Government wiretapping was authorized in cases of specified serious crimes. Such wiretapping is strictly regulated by the need to get a court order from a judge after showing probable cause for a belief that a crime has been or would be committed. The detailed requirements of the law actually provide more protection of privacy rights than does the warrant procedure that has long been established for physical searches and seizures.

Thus I cannot conceive how court-authorized wiretapping as such can continue to be a public issue, any more than making a search or seizure with a warrant. The prin-

ciple has been set forth by the Supreme Court and the procedures have been spelled out by Congress.

I might add that its use has proven extremely effective in getting evidence that would otherwise be impossible against organized criminals. From January 1969 to March 1971, 315 Federal court-authorized wiretaps—including 51 extensions—were executed. All but 12 produced incriminating evidence. As a result, over 900 persons were arrested and so far, 100 of them were convicted. Additional convictions will undoubtedly result as other defendants among those arrested are brought to trial.

Far from being a source of public fear, as some would have us believe, court-authorized wiretapping provides added protection to the public against organized crime. Used with careful legal limitations, as it has been under the 1968 law, it is a positive benefit to the community.

Let me turn now to the other type of wiretapping that was also covered in the 1968 Act. Congress specifically excepted from the court order requirement the President's need to obtain information to protect the nation against foreign attack or against, and I quote, "the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government." This was also in conformity with Justice Byron White's concurring opinion in the *Katz* case, in which he wrote:

"We should not require the warrant procedure and the magistrate's judgment if the President of the United States or his chief legal officer, the Attorney General, has considered the requirements of national security and authorized electronic surveillance as reasonable."

The fact is that such wiretapping had been used at least since 1940, when President Franklin D. Roosevelt called attention to the danger of "Fifth Columns" and authorized the Attorney General to use "listening devices" against "persons suspected of subversive activities against the Government of the United States, including suspected spies." He added, "You are requested furthermore to limit

these investigations so conducted to a minimum and to limit them *insofar as possible* to aliens."

Let me point out that national security wiretapping without a court order has been used by every subsequent Administration. Congress agreed in its 1968 law, believing that such wiretapping was outside the traditional type of judicial decision involving probable cause for a warrant. National security wiretapping is an executive decision, requiring a variety of national considerations other than judicial ones.

Since this 1968 legislation, the wiretap issue has continued to unfold in the courts. A distinction has been manufactured between so-called "foreign national security wiretapping" and so called "domestic national security wiretapping." Two Federal district courts have ruled that the "domestic" variety is unconstitutional without a court order. Two other district courts have ruled that such wiretapping *is* constitutional without a court order. The Sixth Circuit Court of Appeals, sitting here in Cincinnati, has upheld the contention of one of the district courts that so-called "domestic national security wiretapping" requires a court order.

I have made these brief historical references to make it clear that national security wiretapping is not a sudden invention of this Administration. What *is* new is the contention that national security wiretapping should be separated into "foreign" and "domestic," and that the latter should require a court order.

This raises a number of questions, which I would like to discuss.

*Question:* Is a court order appropriate for *any* national security wiretaps?

*Answer:* As you know, a court order is required to execute a wiretap in the prosecution of a criminal offense. In order to obtain such a court order, considerable evidence must already have been gained to show "probable cause."

Time is not of the essence in gathering such prior evidence.

But in a case where the national security is threatened, prevention is the first consideration. We first need intelligence on the movements of suspected conspirators, not formal evidence on which to convict them. In order for a national security wiretap to do any good it should come near the beginning of the investigation. Yet at that time we may not have enough evidence to show probable cause for a court order to wiretap. In fact, if we had such evidence we could probably prevent the threat in question without needing a wiretap.

I hope I have said enough to show that the requirement for a court order *is* appropriately applied to orthodox criminal-type wiretaps, but it does not fit the situation when applied to the national security field. By the time enough evidence is obtained to show probable cause, it may well be too late.

*Question:* Does a national security wiretap without court order conflict with the individual's right of privacy, and must it give way before that right?

*Answer:* Privacy is a precious right, but it is never absolute to the exclusion of other rights. The Fourth Amendment, which protects privacy, does not prohibit all searches and seizures. It prohibits only *unreasonable* searches and seizures. This contrasts to the unqualified guarantees in the First, Fifth, and Sixth Amendments. In fact, the courts have even indicated that the right of free speech set forth so clearly in the First Amendment must be weighed against other individual rights in such areas as slander, libel, plagiarism, copyright, and the right of privacy itself.

On the other hand, what about another right—the right of the public to protect itself and to preserve the government it has created? *This* right is implicit in the Constitution's very existence, and in the political theory on which it is based. I refer to the social contract by which man voluntarily gives up a degree of jungle liberty to a gov-

ernment of his own making, which in turn protects his liberties against jungle attack by others.

Preserving such a government is most certainly a right of the people who constituted it. As Abraham Lincoln said in his First Inaugural Address, "It is safe to assert that no government proper ever had a provision in its organic law for its own termination." And as I would add, the United States Constitution does not end with the words, "This document will self-destruct."

My point is that the issue of privacy must be considered in this dual context; where these two rights appear to conflict, then we must do what we can to preserve both as fully as possible. But neither commands our total allegiance while the other is dismissed out of hand.

*Question:* Does the tapping of telephone lines constitute a reasonable exercise of the Government's right of self-preservation?

*Answer:* It is not only reasonable in this context, but the proper authorities would be derelict if they did not use it. Where there is reason to believe persons are planning a violent attack on the existing structure of the Government, that Government is justified in finding out about those plans. It would be little comfort, after the Government had been overthrown by force, to say, "Well, we didn't feel we should eavesdrop."

*Question:* What about something less than the threat of actual overthrow? The bombing of the Capitol building? The assassination of a President? If we *could* prevent such monstrous acts through wiretap knowledge, do we have the constitutional right? In such cases should the Government's right to defend itself against violent attack prevail over the individual's right of privacy?

*Answer:* It must prevail, unless we wish to allow our orderly representative government to be disrupted. Liberty no less than security is endangered when government is prevented from governing.

*Question:* Should we distinguish between "foreign" national security wiretapping and "domestic" national security wiretapping?

*Answer:* How do we distinguish "domestic" and "foreign" enemies of our governmental structure? If they are aliens who are working on their own and are not connected with the government of another country, is their threat foreign? If they are American citizens directed by a foreign power, is the threat domestic? And while we are trying to find out which is which, may we tap a wire, or do we have to wait and search the rubble to find out?

If the institutions of our government have been destroyed, does it help to be able to say, "they have been destroyed from within?"

If these case seems too remote, let us look again at an occurrence that has been all too real. I refer to Presidential assassination, which certainly would fall under the classification of "a clear and present danger to the structure or existence of the Government." Since the Civil War four Presidents—Lincoln, Garfield, McKinley, and Kennedy—have been assassinated. Unsuccessful attempts were made on the life of one President-elect, Franklin D. Roosevelt, and one President, Harry Truman. None of these six deeds was done at the direction of a foreign power; I believe those who would make a distinction between foreign and domestic subversion would classify them as "domestic." At least two of them—the cases of Lincoln and Truman—were conspiracies. The question is, if it would have been possible to uncover these conspiracies and prevent them through wiretapping, should the Government have done so?

I would answer this with another question: Are we to stand by and let the plot unfold, so we can say, "Yes, it was a true-blue American bullet?"

Ladies and gentlemen, national security is indivisible. You cannot separate foreign from domestic threats to the Government and say that we should meet one less decisively than the other. I don't see how we can separate the two, but if it were possible, I would say that experience has shown greater danger from the so-called domestic variety. Either we have a constitutional government that can defend itself against illegal attack, or in the last analysis

we have anarchy. The issue was eloquently expressed by Abraham Lincoln in his special message to Congress after the Civil War had begun.

"And this issue," he said, "embraces more than the fate of these United States. It presents to the whole family of man the question whether a constitutional republic or democracy—a government of the people by the same people—can or cannot maintain its territorial integrity against its own domestic foes . . . It forces us to ask: Is there in all republics this inherent and fatal weakness? Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?"

This crucial question has resounded for more than a century since Lincoln. Obviously, we are still grappling with it today. Just as obviously, the answer lies in pursuing a fine balance between individual liberty on the one hand and collective survival on the other. So far we have maintained this balance as we have developed a sound body of constitutional law. But if we ever choose unbridled liberty over government itself, we will soon have neither.

DEPARTMENT OF JUSTICE

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# "WIRETAPPING AND OUR NATIONAL SECURITY"

AN ADDRESS OF
JOHN N. MITCHEL
ATTORNEY GENERAL

BEFORE THE
VIRGINIA STATE BAR ASSOCIATION
Roanoke, Virginia
June 11, 1971

You have all, I am sure, heard and read a great deal in the last few months about one of the most controversial legal issues of present times—that of national security wiretapping without a warrant. Because it involves the right to privacy, which all Americans cherish rightly, and which this Government is dedicated to protect, the subject is fraught with deep emotional overtones.

The controversy has raged, both in the courts and in the press, and will continue to do so until the Supreme Court speaks to the issue. I would like to explore this issue with you, in hopes of dispelling some of the misconceptions that have arisen.

At the outset, let us consider the stakes involved in the Government's use of electronic surveillance in national security cases. Our success in counteracting hostile intelligence forces and domestic revolutionary elements depends on our ability to learn what they are doing. A key factor in accomplishing this has been the selective use of wiretapping.

The value of wiretapping in combatting foreign-directed espionage and subversion is widely recognized; it has been an integral part of the counter intelligence program of every major country.

The threat to our society from so-called "domestic" subversion is as serious as any threat from abroad. Never in our history has this country been confronted with so many revolutionary elements determined to destroy by force the Government and the society it stands for. These "domestic" forces are idealogically and in many instances directly connected with foreign interests.

In a speech on electronic surveillance Lewis F. Powell, Jr.—one of the nation's most distinguished attorneys and a former president of the American Bar Association—had this to say:

> The distinction between external and internal threats to the security of our country is far less meaningful now that radical organizations openly advocate violence. Freedom can be as irrevocably lost from revolution as from foreign attack.

In recent times, this nation has witnessed ever-increasing numbers of acts of sabotage. In August 1970, a bomb exploded in Sterling Hall at the Madison campus of the University of Wisconsin, killing one individual and causing damages estimated at three million dollars. The wave of terrorist bombings reached a climax with the brazen bombing of the U.S. Capitol early this year. These are not isolated incidents. According to statistics of the National Bomb Data Center, in the ten-month period from July 1, 1970 to May 1, 1971, there were 1,378 bombings in this country—the vast majority of which were related to sabotage of the Nation's military efforts. In these bombings, 106 people were injured and 14 people were killed.

The selective use of wiretapping has been a vital part of the United States Government's defense against subversion for the last three decades. It has led to identification of hostile intelligence officers and their contacts and agents in the United States, disclosure of potential or actual defectors among U.S. nationals, detailed information concerning the *modus operandi* and intelligence methods of hostile agents, and exposure of connections between "domestic" subversive groups and foreign interests.

The argument for national security wiretapping does not rest in necessity alone; it has a very firm legal basis. It is the legal basis that I would like to emphasize in my remarks today.

In this Nation, the Government is constituted by the people and charged with the responsibility, in the words of the Preamble to the Constitution: "to insure the domestic Tranquility, promote the general Welfare, and secure the Blessings of Liberty." Overthrow of this Government by force and violence would be utterly inconsistent with the peaceful means for change provided by the Framers, and would deny to each citizen these securities to which he is entitled.

The Constitution designated the President as the Chief Executive and obligates him to "preserve, protect, and defend the Constitution of the United States." When the President enters upon his office, Article II, Secion 1 of the Constitution requires him to solemnly swear that he will fulfill this obligation. This oath obviously does not refer to the defense of a piece of paper, but to the defense of the actual operation of the Constitution in prescribing the guidelines of Government. Were the President to permit the overthrow of that Government by unconstitutional means, he would be violating his constitutional oath. Nor does the President's oath differentiate between foreign and domestic enemies, requiring him to protect the Constitution against one but not against the other.

The Constitution of the United States cannot possibly be construed as containing provisions inconsistent with its own survival. It is the charter for a viable governmental system—not a suicide pact. Thus, a Presidential decision as to the steps to take in averting a clear and present danger to the national security cannot and should not wait until actual attack, sabotage, or insurrection have occurred.

Accordingly, the President has an obligation to collect, in advance and on a continuing basis, whatever information is reasonable and necessary for present and future decisions in using the forces at his command. No less can be

expected of him if he is faithfully and dutifully to exercise his constitutionally imposed responsibility to protect the national security.

Persons intent on using illegal means to change or alter our form of Government do so covertly, and information as to their activities often can be obtained only in a covert fashion. Wiretapping was proven to be an effective method for obtaining such information.

The wiretapping question has been evolving in the courts for many years, and has been presented in various forms. Generally, these cases can be reduced to two prototypes: (1) wiretapping to attain evidence in the enforcement of penal statutes, and (2) wiretapping to provide necessary intelligence information on a continuing basis to assist the President in discharging his duty to assure and preserve our national security.

In its landmark decision in *Katz* v. *United States*, rendered in 1967, the Supreme Court held for the first time that a wiretap initiated for prosecutive purposes in a criminal case constituted a search and seizure within the meaning of the Fourth Amendment. The Fourth Amendment does not proscribe all searches and seizures, but only those which are found to be unreasonable. Consequently, if it meets this test of reasonableness, wiretapping is a permissible governmental tool.

The Department of Justice has recognized that, when prosecutive information in a criminal case is sought, electronic surveillance—like most searches and seizures—requires a prior judicial warrant. In the litigation currently evolving in the courts, the Government has taken the position that the reasonableness standard of the Fourth Amendment is a flexible one and does not require in all cases that a warrant be obtained. It is our position that compelling considerations exist when the President, acting through the Attorney general, has determined that a particular surveillance is necessary to protect the national security and that under these circumstances the warrant requirement does not apply.

It should be recognized that the Supreme Court has repeatedly held that under exceptional circumstances searches are reasonable though no warrant has been obtained. We believe that national security surveillance is of an exceptional nature and falls within this limited category. Pertinent here is the Court's explicit recognition in another case that "in applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration." The Supreme Court has never passed on the question whether "national security" surveillance is reasonable when conducted without a warrant, but Justice White, concurring in *Katz*, has written:

> We should not require the warrant procedure and the magistrate's judgment if the President of the United States or his chief legal officer, the Attorney General, has considered the requirements of national security and authorized electronic surveillance as reasonable.

The Congress has recognized that national security cases involve such compelling considerations. In response to the *Katz* decision, Congress enacted detailed wiretapping legislation in the Omnibus Crime Control, and Safe Streets Act of 1968. In that legislation, the Congress specifically set forth the standards that govern the granting of warrants for electronic surveillance in criminal cases. The Congress, however, carefully avoided imposing the warrant requirement in national security cases by including a provision in the statute which explicitly recognizes the President's authority to conduct such suveillances.

It is our position, given the long-standing practice of the Executive and the Congressional recognition of the necessity for distinguishing between wiretapping in ordinary criminal cases and in national security cases, that warrantless national security surveillances are reasonable within the meaning of the Fourth Amendment.

We have not argued against the need to get authorization for such a wiretap. Instead, we maintain that in national security cases the authorization required by the

Constitution is that of the President of the United States, acting through his Attorney General, rather than that of a local magistrate.

It is not claimed that the President is exempt from the provisions of the Fourth Amendment, or that his discretion is unbridled. For any abuses of the power, the President is answerable not only to the electorate from whom all his powers are ultimately derived, but his decisions may also be reviewed by the courts in appropriate *in camera* proceedings. We simply say that the President's authorization of electronic surveillance for gathering intelligence in national security cases meets the requirement of reasonableness in the Fourth Amendment.

There are sound reasons for confining the authority to order electronic surveillance in national security cases to the President rather than to multitude of lower court judges. The nature of the sensitive information involved in national security cases is not susceptible to evaluation by persons untrained in national security matters or to wide dissemination to persons not authorized by law to receive such information. Only the President is in a position to evaluate adequately such information in the light of various intelligence data submitted by the independent agencies within the intelligence community. We submit that the President, by virture of his office and sources of information, is in a far better position than any magistrate to determine the need to initiate surveillance where the national security is at stake.

But if the authority to issue a warrant in national security cases is to be vested in magistrates only, the United States is left essentially with two options:

(1) To make disclosure to any one or more of over 600 members of the Federal judiciary who in most instances cannot be expected to have the necessary background to analyze the significance of the information disclosed or the necessity for the intelligence sought, or

(2) To become the only nation in the world unable to engage effectively in a wide area of counter-intelligence activities necessary to the national security.

These alternatives do not adequately protect the interests of privacy or of the security of citizens of the United States. Neither alternative, we submit, is acceptable and the Constitution does not require that we accept them.

It has been argued that the President might abuse his power to authorize national security wiretapping. This is put forward to challenge the "reasonableness" of a Presidential authorization, under the Fourth Amendment, and to insist that such authorization be made by the judiciary. Yet the courts that have questioned the constitutionality of the Presidential authorization on this ground are showing a remarkable inconsistency, which I will explain.

In 1805 the U.S. Supreme Court asserted its power to declare an act of Congress unconstitutional in the case of *Marbury* v. *Madison*. Chief Justice John Marshall emphasized that a Federal judge is required by his oath of office to discharge his duties "agreeably to the Constitution and laws of the United States." How could he do this, Marshall asked, if the Constitution "is closed upon him, and cannot be inspected by him? If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime."

In challenging the President's power to authorize national security wiretapping, the Sixth Circuit Court of Appeals reasserted the power of the court to make such judgments of constitutionality, drawing heavily on the *Marbury* v. *Madison* opinion. Yet the very argument of the courts' obligations under oath made in *Marbury* v. *Madison* must apply as well to the President's obligations under *his* oath—the more so since his oath is prescribed in specific words in the Constitution, while the judiciary's oath is not. The President's oath obligate him to "preserve, protect, and defend" the Constitution and the U.S. Government. To deny the President the means of obtaining intelligence on which to base actions in defense of that Government would be to deny him powers essential to the discharge of his oath. If this is the real state of things, to borrow Marshall's words, "this is worse than solemn moc-

kery. To prescribe, or to take this oath, becomes equally a crime."

Since electronic surveillance is an effective means of gathering intelligence in national security cases, and is used by all major countries for such pruposes, the President would be derelict if he did not use it where necessary and appropriate in defense of the constitutional Government.

Thus to claim that the President might abuse this power is the same as claiming that there should be no office with such power—an obviously self-defeating proposition. It is the same as arguing that the courts might abuse the power of constitutional review that Chief Justice Marshall found implicit in *his* oath. Such an argument was effectively answered not only in Marshall's *Marbury* v. *Madison* opinion, but also a number of years earlier by Alexander Hamilton, who wrote that "if it prove anything, would prove that there ought to be no judges."

Are we, then, to trust the courts to fulfill their oath of office without abusing it, but not trust the President in fulfilling his oath? Clearly the hard questions of government must be decided by someone. To withhold such basic powers from the President on the ground that they might be abused is to argue, in a paraphrase of Hamilton's words, "that there ought to be no President."

Finally, the distinction to which I alluded earlier—that between wiretapping in criminal cases and wiretapping in national security situations—is not the one that some lower Federal courts have today chosen to draw. Rather, they attempt to justify a distinction between so-called "foreign" national security wiretapping and so-called "domestic" national security wiretapping.

The use of the terms "foreign" and "domestic intelligence" and "foreign" and "domestic organizations" has resulted in a great deal of confusion and has created a dichotomy, which cannot be supported in law or fact. There is no dividing line between hostile foreign forces seeking to undermine our internal security and hostile "domestic groups" seeking the overthrow of our Govern-

ment by any means necessary. I don't see how we can separate the two, but if it were possible, I would say that history has shown greater danger from the domestic variety.

As a legal proposition, what difference is there between the threat posed to the security of the United States by those who act as agents of a foreign power and that posed by an allegedly "domestic" organization? The Constitution requires the President to swear that he will "preserve, protect, and defend the Constitution of the United States." It does *not* say that he will "preserve, protect, and defend" it only against foreign agents, and that he must permit all others to destroy it if they will. It makes no distinction in its charge of responsibility to the President, and he can make none in his sworn oath to carry out that charge. You cannot separate foreign from domestic threats to the Government and say that we should meet the less decisively than the other. Either we have a constitutional Government that can defend itself against illegal attack, or in the last analysis we have anarchy. I firmly believe that the Constitution does not contain the seeds of its own destruction. Rather, it provides an enlightened basis by which man can prove that he can maintain both his freedom and his Government.

**UNITED STATES GOVERNMENT**
**DEPARTMENT OF JUSTICE**

**MEMORANDUM**

Date: May 6, 1969

TO: Director
Federal Bureau of Investigation

FROM: The Attorney General

SUBJECT: OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

This is in reference to your memorandum to Attorney General Clark of July 2, 1968, captioned as above, in which you posed a number of questions regarding the effect of the electronic surveillance provisions of the Omnibus Crime Control Act upon the operations of your Bureau in the security field.

Insofar as national security cases are concerned, the Act treats with two procedures by which wire and oral communications may be legally intercepted. The first, as set forth in Section 2511(3), recognizes the constitutional power of the President to authorize interceptions in certain specified instances involving the security of the nation. This section does not grant new or additional authority to the Attorney General. The second procedure, outlined in Section 2516, *et seq.*, provides that interceptions may be made in certain specifically designated cases, when authorized and supervised by a Federal judge.

It is our view that the only practical procedure for authorizing electronic eavesdropping for intelligence purposes in most national security cases is that which is described in the Presidential authorization provision. Although in the court order procedure, the Act provides a means for safeguarding from public disclosure, prior to prosecution, the existence of an electronic eavesdropping device in a particular case, as well as the contents of the application for court approval of the device, and the results obtained from the installation, enforcement of these provisions is left to the discretion of the judge. (See Sec-

tion 2518(8)(a) *et seq.*) Moreover, Section 2518(8)(d) provides that within 90 days the judge shall advise the subject of the court order and, in his discretion, make available part or all of the intercepted communications. This procedure may be "postponed," but not avoided. In these circumstances, there can be little assurance that sensitive data, in a case not brought to prosecution, can be protected from public disclosure. However, it may be desirable to obtain a court order if, at the time authorization is sought for coverage, it appears that prosecution is likely. In all events, a determination whether to employ the Presidential authorization provision, or to follow the "court order" route, must be made on an *ad hoc* basis in the light of the facts of the particular case.

We shall endeavor to answer your specific questions with respect to the effect of the Act upon this, and other operations of the Bureau in this area in the order in which they were raised.

## I

## Procedures to be Followed by the Bureau In Requesting New Coverage and Additional Action Necessary Relative to Existing Coverage

As to the procedure to be followed by the Bureau in requesting new electronic coverage, it may be noted that Section 2518(3) sets forth the "probable cause" which must be adduced to support an application for court approval of the interception of wire or oral communications. It is manifest that all of the statutory elements must be met before the Attorney General is warranted in seeking, and the court is justified in issuing, an order approving electronic coverage, pursuant to the provisions of Section 2516, *et seq.*, of the Act. The Criminal Division is currently preparing a Manual for Conduct of Electronic Surveillance, which will contain detailed instructions regarding the form of, and the information to be contained in, future requests to the Attorney General for authorization

to apply for an interception order from the courts. The procedures outlined in the Manual should be followed whenever it is anticipated that a court order will be sought for the requested electronic coverage.

Section 2511(3), the Presidential authorization provision, provides that nothing contained in the Act or in Section 605 of Title 47, United States Code, shall limit the constitutional power of the President to take such measures as he deems necessary:

1. To protect the Nation against actual or potential attack or other hostile acts of a foreign power.
2. To obtain foreign intelligence information deemed essential to the security of the United States,
3. To protect national security information against foreign intelligence activities.

This section also provides that nothing contained in the Act shall be deemed to limit the construction power of the President to take such measures as he deems necessary to protect the United States:

1. Against the overthrow of the Government by force or unlawful means or,
2. Against any other clear and present danger to the structure or existence of the Government.

The section further provides that the contents of any communication intercepted pursuant to the Presidential powers may be received in evidence at any trial or other proceeding *where such interception was reasonable.* The requirement that the interception be "reasonable" applies only where the Government seeks to introduce at trial evidence obtained through the interception. In those instances where authority to intercept for *non-prosecutive* purposes is requested, the "resonableness" standard would not, it appears, have to be met. However, as the Supreme Court has made clear in *Alderman-Ivanov* v. *United States*, 37 U.S.L.W. 4189, and in *Giordano* v. *United States*, decided March 24, 1969, the *legality* of the interception is of prime importance in determining whether information regarding the electronic surveillance must be disclosed to a defendant whose conversations have

been intercepted. (See *Alderman-Ivanov*, *supra*, at p. 4190, n. 3 and Concurring Opinion of Justice Stewart in *Giordano.*)

Accordingly, we must insure that all approvals for permission to intercept private conversations rest upon a sound foundation sufficient to enable us to justify such coverage under the terms of the Act. To this end, we believe that, in the future, all applications to the Attorney General for permission to obtain intelligence information pursuant to the standards set forth in Section 2511(3) of the Act, should contain, at a minimum, the following information:

1. An identification of the premises and location, and the room or office, in which the interception device is to be placed or phone to which such a device is to be attached and facts regarding the installation to assist in determining whether a trespass will be involved.
2. A general description of the activities subject is engaged in and the type of information which it is anticipated will be obtained through the electronic coverage.
3. The period of time for which approval is requested, with subsequent advice as to date of installation.
4. Whether it is anticipated that the conversations of any other subject who is under active investigation for possible criminal violations will be overheard.
5. If permission is sought for electronic coverage of a diplomatic establishment or of a foreign diplomat, whether approval of the State Department has been sought and obtained.
6. If the application is for extension of time or a renewal of authority, a brief description of the type of intelligence information which has been previously obtained from electronic coverage, of these premises.

*In addition* to the above information, if approval is sought from the Attorney General, pursuant to Section 2511(3), for electronic coverage where it is anticipated that the results thereof will be introduced in evidence at trial,

or that leads to evidence to be introduced at trial will be obtained, the following information should be included in your request to the Attorney General for authority to intercept:

1. The crime or crimes which it is believed are being committed by the person or persons whose conversations are likely to be overheard.
2. A complete description of the investigation being conducted—its origin, development, and present status. This description should include a detailed analysis of all investigative procedures utilized and a statement as to their inadequacy and the need to use the proposed techniques.
3. The names and backgrounds of each prospective subject of the investigation.
4. A description of the communications expected to be intercepted, together with an analysis of the relevance of the communication to the investigation.

Where approval is sought to intercept communications, which it is anticipated will be introduced into evidence, a specific time period for the use of the device should be set forth, and in no event should that period exceed thirty days, subject, of course, to requests for extension.

## II

### Limitations on the Bureau's Dissemination of Results of National Security Electronic Coverage to other Governmental Agencies or to Agencies of Allies of the United States

Section 2511(3) of the Act specifically provides that the contents of any wire or oral communication intercepted by authority of the President shall not be otherwise used or disclosed "*except as is necessary to implement that power.*"

We interpret the provisions of Section 2511(3) as permitting the Bureau to disclose the results of such coverage to other investigative and law enforcement agencies of the

United States or of a State or political subdivision thereof which have a clear "need to know" such information, or to investigative agencies of allies of the United States who have such a "need to know" in order to assist the FBI in carrying out its counter-intelligence responsibilities in protecting our national security and enforcing applicable internal security laws of the United States. Obviously, dissemination of information obtained through electronic coverage should be strictly limited and should not, in any case, violate the dissemination limitations which are currently imposed upon classified national defense information. Moreover, whenever evidence of possible criminal conduct is developed as the result of national security electronic coverage, other than that installed pursuant to a court order, extreme caution should be exercised in the dissemination of such information and in any instance where dissemination is made outside of the FBI, the information should be clearly identified as having originated from electronic coverage. In the event a question should arise as to whether a particular item of information falls within or without these general guidelines, it is suggested that you seek the advice of the Department as to whether such dissemination should be made.

## III

### Procedure to be Followed by the Bureau in Preserving Tape Recordings of Intercepted Conversations

Section 2518(8)(a) of the Act provides in regard to interceptions authorized by court order:

> "The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available

> to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years."

Although we recognize the expense and storage problems which preservation of tape recordings of intercepted conversations may create, we believe this subsection clearly requires the preservation, for at least ten years, of any tape recordings of an intercepted wire or oral communication which are authorized by court order. Thereafter, such recordings may be destroyed only upon an order of the issuing or denying judge. With regard to tape recordings of wire or oral communications intercepted under the authority of the President, (Section 2511(3)), such tapes should be preserved for a minimum period of ten years.

## IV

### Necessity of Including Results of Electronic Surveillances Obtained in the Security Field Subsequent to Enactment of the Act When Responding to the Department's Request for a Search of the Bureau's Special Indices Solely for Determination of Tainted Evidence

As we noted under Point I, the *Alderman-Ivanov* and *Giordano* cases, require that the Government establish the legality of the electronic surveillance to the satisfaction of the District Court, where that issue has been raised by the defendant. "(T)he District Court must develop the relevant facts and decide if the Government's electronic surveillance was unlawful." *Alderman-Ivanov* v. *United States*, 37 U.S.L.W. at 4190, n. 3. This will entail the production of the surveillance logs to the Court. In these circumstances, it is obvious that the Department must first review the results of the electronic surveillance prior to producing the logs to the Court.

Where the Government must admit the illegality of the surveillance, the interceptions of the defendant must be turned over to the court and the defense for an appropriate determination of relevancy.

In national security cases, as indicated in our discussion of point II, the Omnibus Crime Control Act places no limitations upon dissemination of the contents of intercepted wire or oral communications to investigative or law enforcement agencies of the Executive Branch of the Federal Government having a need to know such information.

Since all interceptions of wire and oral communications by the FBI are undertaken under the authority of the Attorney General, it seems evident that the results of such interceptions may lawfully be made available to him.

In these circumstances, you should continue to include the results of all your electronic surveillances when responding to the Department's requests for a search of your special indices for determination of tainted evidence or instances where disclosure may otherwise be called for.

March 10, 1969

The President
The White House
Washington, D.C.

Dear Mr. President:

After meeting with you the other evening and visiting around a bit, I feel I should write you to try and impress upon you the urgency of more rapid changes in personnel lest you lose control of the government.

You will recall, as I discussed with you, that President Eisenhower had this calamity befall him, and I don't want to see it happen to you, but if we can't move in the decision making areas and do it completely by another month, I think you are going to see trouble begin to arise.

As a good example, and you can check this with him, I saw Arthur Burns the other day and he cited me this experience that he had just recently. He had heard that there were discussions being held relative to financing Social Security out of the income tax. Naturally, this disturbed him as it would you or me, so he sent a memorandum down to the Treasury asking about this.

He received in due time a letter thanking him for this and stating that it was a very interesting proposal and that the Secretary would delve into it. Obviously Secretary Kennedy did not write this letter. He might not even have signed it but somebody did in the echelons of his think tank write it and it has probably by now some official stigma to it.

I cited to you the case of Mr. Kissinger taking Mr. Halperin, one of the really troublesome actors who was dismissed from the Defense Department, and I am hearing more and more tales of these people who caused so much trouble during the Johnson Administration being kept in their present jobs or being shuffled around so they are not lost.

I hope you will not mind my writing you on problems like those but, as I told you the other evening, our first job has been completed, that of getting you elected, and our next job of getting you re-elected has already begun and, while I have a feeling the job will be a lot easier, I don't want to make it any harder by having to put up with Democratic shots from within our ranks.

In closing and on another subject, I think you know of my great interest in having Bill Quinn appointed Ambassador to Greece, and I have one further suggestion; if you haven't picked one for Ireland, one of your best friends and a wonderful Republican woman, Rose Saul Zallas, would be great for that spot.

With warm wishes and respect,

Barry Goldwater

BG/judy

UNITED STATES SENATE

WASHINGTON, D.C. 20310

PERSONAL AND CONFIDENTIAL

April 22, 1969

The Honorable John Mitchell
The Attorney General
Department of Justice
Washington, D.C.

Dear John:

First, I want you to know how much I enjoyed visiting with you at lunch the other day and I only hope we can do it once in a while in the interest of the Party.

I told you I would send you a list of names and here they are: Halperin is on the NSC staff and, as I understand it, works under Kissinger; [DELETED]

These are the people who made it so hard for the military to operate in the Pentagon by their strategic papers which were forced down the throats of the Joint Chiefs and Commanders. I really thought that Mel had gotten rid of most of them but, obviously, he hasn't and unless he has a good reason for keeping them, I am afraid it will mean trouble.

With best wishes,

Barry Goldwater

**UNITED STATES DEPARTMENT OF JUSTICE**
**FEDERAL BUREAU OF INVESTIGATION**

WASHINGTON, D.C. 20535

10:35 AM May 9, 1969

MEMORANDUM FOR MR. TOLSON
MR. DE LOACH
MR. SULLIVAN
MR. BISHOP

Dr. Henry A. Kissinger, National Security Adviser to the President, called from Key Biscayne, Florida. He advised that there is a story today on the front page of the New York Times by William Beecher which is extraordinarily damaging and uses secret information. Dr. Kissinger said they wondered whether I could make a major effort to find out where that came from. I said I would. Dr. Kissinger said the article is in the lower right hand corner of the front page and to put whatever resources I need to find who did this. I told him I would take care of it right away. Dr. Kissinger said to do it discreetly, of course, but they would like to know where it came from because it is very damaging and potentially very dangerous. I commented it is this kind of thing that gives us headaches of where they come from; that if we can find the source one time and make an example it would put a stop to it. Dr. Kissinger agreed and said that is what they propose to do.

Very truly yours,
JOHN EDGAR HOOVER
*Director*

[What do you suggest?]

**UNITED STATES DEPARTMENT OF JUSTICE**
**FEDERAL BUREAU OF INVESTIGATION**
WASHINGTON, D.C. 20535

5:05 PM May 9, 1969

MEMORANDUM FOR MR. TOLSON
MR. DE LOACH
MR. SULLIVAN
MR. BISHOP

I called Dr. Henry A. Kissinger, National Security Adviser to the President, at Key Biscayne, Florida. I told him I had some information which I thought he ought to know about so as to bring him up to date.

I told him that in regards to the background of William Beecher, who wrote the article in the New York Times today, he is formerly from the St. Louis Globe Democrat and then went to the Wall Street Journal and was later employed by the New York Times. He has been active in the U.S. Army reserve program for a period of time and is described as particularly astute as to military affairs. Our investigation led to nothing very definite except the possibility that his story was primarily on informed speculation as there had been made available publicly a lot of source material from which he could draw his conclusions.

I stated that in regard to the current three articles, it is the conclusion of the contracts we have made that it could have come and probably did from a staff member of the National Security Council. I continued that Beecher while at undergraduate school at Harvard had a roommate who is now a staff member of the National Security Council. There is a strong possibility also that he may have gotten some of his information from the Southeast Asian Desk Public Affairs Office of the Department of Defense, as the Public Affairs Office is constituted of employees who are pronounced anti-Nixon. I continued that Beecher frequents this office as well as the National Security Council and the employees freely furnish him information inasmuch as they are largely Kennedy people and anti-Nixon.

I said that also in the Systems Analysis Agency in the Pentagon, there are at least 110 of the 124 employees who are still McNamara people and express a very definite Kennedy philsophy.

6:05 PM May 9, 1969

MEMORANDUM FOR: MR. TOLSON
MR. DE LOACH
MR. SULLIVAN
MR. BISHOP

I called Dr. Henry A. Kissinger, National Security Adviser to the President, at Key Biscayne, Florida. I told him I had some information which I thought he ought to know about so as to bring him up to date.

I told him that in regards to the background of (Beecher) who wrote the article in _____ today, he is formerly from the _____ and then went _____ and was later employed by _____. He has been active in the U.S. Army reserve program for a period of time and is described as particularly astute as to military affairs. In 1968 at the request of Marvin Watson, Assistant to the President at that time, we conducted an investigation as to a leak of information concerning United States government policy in the anti-missile field in connection with an article by (Beecher) in of December__, 1966. Our investigation led to nothing very definite except the possibility that his story was primarily on informed speculation as there had been made available publicly a lot of source material from which he could draw his conclusions.

I stated that in regard to the current three articles, it is the conclusion of the contacts we have made that it could have and probably did from a staff member of the National Security Council. I concluded that (Beecher) while at un-

dergraduate school at _____ had a roommate who is now a staff member of the National Security Council. There is a strong possibility also that he may have gotten some of his information from the Southeast Asian Desk, Public Affairs Office of the Department of Defense, as the Public Affairs Office is constituted of employees who are pronounced anti-Nixon. I continued that (Beecher) frequents this office as well as the National Security Council, and the employees freely furnish him information inasmuch as they are largely Kennedy people and anti-Nixon. I said that also in the Systems Analysis Agency in the Pentagon, there are at least 110 of the 124 employees who are still McNamara people and express a very definite Kennedy philosophy.

I continued that this situation has made it very easy for Beecher to obtain information; however, the source we have been working through said it should not be ruled out that a staff member of the National Security Council who obviously was in a position to know the information contained in all three articles could have assisted Beecher. Dr. Kissinger said he has heard this as an allegation, too, but there is no proof; that he has heard it as a speculation. I said, of course, this is speculation all the way through tying it into this and Halperin. I said that Beecher works full time at the Pentagon and was asked today as to what his source of information was, and he said it was an excellent one. He said that his source was from the Air Force, but he did not reveal any names. I continued that he stated the Air Force was particularly anxious to soften up its press in its bomber program and is endeavoring to obtain a favorable image with the press. I commented that I thought that was probably a misleading statement by Beecher to throw it into the Air Force.

I continued that there is a man named Eagleburger who attended the Central State College at Stevens Point and the University of Wisconsin and is presently a State Department Foreign Service officer on detail to the National Security Council at the White House. I said he was for-

merly an assistant to former Under Secretary of State Nicholas Katzenbach and is a close friend of Beecher.

I said in regard to Halperin, we conducted an applicant investigation of him in 1963 and in February 1969 and the investigation reflected Halperin and other experts in his field are of the opinion that the United States leadership erred in the Vietnam commitment as we did not possess the interest or capabilities to obtain the original objectives. I said that in 1965 his name appeared on a list of individuals who responded to a request for a public hearing on Vietnam by agreeing to sponsor a national sit-in. I said the [DELETED] 1965 advised that Halperin's name was on a list of Americans who had reportedly received the World Marxist Review Problems of Peace and Socialism, a communist publication.

I continued that from another source it was indicated we should not overlook the Systems Analysis Agency in the Defense Department who had an employee named Ivan Selin and another named Halperin currently employed as staff employee of the National Security Council. I said they are very close to each other and both are so-called arrogant Harvard-type Kennedy men who would not hesitate to do anything to save their jobs. I said it was stated that Halperin was particularly anxious to save Selin's job with the Systems Analysis Agency. I said both men know Beecher and consider him a part of the Harvard clique, and, of course of the Kennedy era and we should not ignore the possibility that Halperin and/or Selin could be the source of the leak to Beecher.

I said that is as far as we have gotten so far. Dr. Kissinger said he appreciated this very much and he hoped I would follow it up as far as we can take it and they will destroy whoever did this if we can find him, no matter where he is.

I told Dr. Kissinger I wanted him to know the developments and he said he appreciated it very much and they will certainly keep looking into it at their end. I told him

we would keep after it and he said they were counting on whatever we can find out.

/s/
JOHN EDGAR HOOVER
*Director*

May 11, 1969

To: Mr. C. C. DeLoach

From: W. C. Sullivan

Subject: COLONEL ALEXANDER M. HAIG
TECHNICAL SURVEILLANCE
REQUEST

Pursuant to my conversation with the Director, Sunday, May 11, 1969, there is enclosed a memorandum for the Attorney General which the Director may want to discuss personally with the Attorney General. It involves a high-level request for technical surveillance on four individuals whose names are contained in the memorandum.

As I told the Director, the request emanated from Colonel Alexander M. Haig, who is assigned to Dr. Henry A. Kissinger's staff. Haig came to my office Saturday to advise me the request was being made on the highest authority and involves a matter of most grave and serious consequence to our national security. He stressed that it is so sensitive it demands handling on a need-to-know basis, with no record maintained. In fact, he said, if possible it would even be desirable to have the matter handled without going to the Department; however, I was told the Attorney General is aware in general of the main elements of this serious security problem.

Colonel Haig said it is believed these surveillance will only be necessary for a few days to resolve the issue. We, of course, can handle the matter most discreetly through our Washington Field Office. Colonel Haig said it is not desired that there be any formal dissemination of the results of our coverage to his office. Instead, he will come to

my office to review the information developed, which will enable us to maintain tight control of it.

*RECOMMENDATION:*

If approved, attached memorandum will not be filed but will be maintained in a secure, off-the-record capacity as basis for authority to proceed in response to this request.

Enclosure

**UNITED STATES DEPARMENT OF JUSTICE**
**FEDERAL BUREAU OF INVESTIGATION**
WASHINGTON, D.C. 20535

May 12, 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

RE: COLONEL ALEXANDER M. HAIG
TECHNICAL SURVEILLANCE REQUEST

On May 10, 1969, Colonel Alexander M. Haig, who is assigned to Dr. Henry A. Kissinger's staff, came to this Bureau to advise that a request was being made on the highest authority which involves a matter of most grave and serious consequence to our national security. He stressed that it is so sensitive it demands handling on a need-to-know basis, with no record maintained. He requested that telephone surveillance be placed on the following individuals to determine if a serious security problem exists: |DELETED| Morton H. Halperin; |DELETED|.

|DELETED|

Halperin, aged 30, was detailed from the Department of Defense to the National Security Council as a senior staff member on January 21, 1968. He was the subject of an applicant-type investigation by this Bureau. While admittedly he has had contact with Soviet nationals the investigation did not disclose at that time any pertinent derogatory information.

Colonel Haig is Military Assistant to the Assistant to the President for national security affairs. He was the subject of an applicant-type investigation and no derogatory information was developed concerning him.

This Bureau is in a position to conduct the necessary telephone surveillances requested by Colonel Haig.

Respectfully,

/s/ _
JOHN EDGAR HOOVER
*Director*

APPROVED /s/ _____
JOHN N. MITCHELL

DATE: 5/12/69

**UNITED STATES GOVERNMENT**

Date: May 15, 1969

**Memorandum**

To Mr. C. D. DeLoach

From: William C. Sullivan

Subject: COLONEL ALEXANDER HAIG
TECHNICAL SURVEILLANCE
REQUEST

As you know, we are running technical surveillances on the four persons in whom Dr. Kissinger is intensely interested. To date, no information has been developed that would identify sources of leaks to The New York Times or elsewhere.

In the case of Mr. Halperin, he has discussed this matter briefly with his wife, who seems to be overtalkative.

This matter is being closely followed and handled with greatest possible security. The Director will be promptly informed the moment anything significant in regard to identification of sources has been secured.

*RECOMMENDATION:*

(1) This is for the information of the Director.

(2) This memorandum should be returned to me so that I may keep all material in connection with this matter in one secure location.

WCS:mls
Original only

May 20, 1969

Dear Mr. Hoover:

Following my conversation with you this mornng, Dr. Henry Kissinger and Colonel Haig came into the office around 11:45. Dr. Kissinger read all the logs. On doing this, he said "it is clear that I don't have anybody in my office that I can trust except Colonel Haig here." He mentioned that he was under great pressures to adopt a soft line on foreign policy. But he said he is not going to do so. He did not mention where the pressures came from, but I got the impression that he meant the Department of State and possibly one or two others high in the administration. He indicated that President Nixon definitely wanted to maintain a hard line.

Dr. Kissinger said he wanted the coverage to continue for a while longer yet on the first four names, and to which will be added two new ones I sent over to you today. He said that what he is learning as a result of this coverage is extremely helpful to him while at the same time very disturbing. He said he had not decided how to handle this problem but he did not see as he could delay it much longer. He said that Colonel Haig, as in the past, would come over to read the logs. He asked to be remembered to you.

Respectfully submitted,

/s/ _____

BILL SULLIVAN

**UNITED STATES GOVERNMENT**

Date: May 28, 1969

**Memorandum**

TO: Mr. C. D. DeLoach

FROM: W. C. Sullivan

SUBJECT: COLONEL ALEXANDER M. HAIG
TECHNICAL SURVEILLANCE
REQUEST

Pursuant to the Director's request, there is enclosed with this memorandum a letter from the Director to President Nixon setting forth some extremely sensitive material on Morton H. Halperin and [DELETED] developed yesterday through our delicate coverage.

Colonel Alexander Haig read the material this morning and expressed his grave concern and said he would transmit the details of this to Dr. Henry Kissinger.

Because of the explosive nature of this operation, I would like to restate the original request made by Colonel Haig to me. It will be recalled he said that the instructions for the Bureau's assistance in this matter came from the highest authority; however, to protect the highest authority he would read the materials and advise Dr. Henry Kissinger. He further stated he did not want any of the logs sent over to Dr. Kissinger's office but that he would read it here and have it kept here. In view of this, I would like to suggest that the Director consider taking this matter up personally and directly with President Nixon rather than having it carried to the President. I suggest this because of the sensitivity related above and that the only way that it could be made known to President Nixon without an intermediary would be through the Director. Additionally, President Nixon might not want anyone else in his office to know of this matter. Lastly, the Director might want to discuss this directly with Dr. Kissinger first.

*RECOMMENDATIONS:*

(1) For the information and consideration of the Director.

(2) That this memorandum be returned to W. C. Sullivan to be retained with the rest of this extremely sensitive material.

Enclosure

WCS:lml
(Original only)

**THE WHITE HOUSE**
**WASHINGTON**
**MEMORANDUM**

TOP SECRET SENSITIVE June 4, 1969

MEMORANDUM FOR MR. KISSINGER

FROM: Al Haig

SUBJECT: Talking Points for Meeting with J. Edgar Hoover, Wednesday, June 4 at 9:30 a.m.

1. Express your appreciation to Mr. Hoover and Mr. Sullivan for their outstanding support in recent weeks in uncovering security problems within the NSC staff. Inform Mr. Hoover that you have discussed these problems in detail with the President (and with Messrs. Haldeman and Ehrlichman).

2. Tell Mr. Hoover of the action to be taken with respect to [DELETED].

3. Ask Mr. Hoover for his views on how we should proceed with Halperin, who has been involved in indiscretions and who obviously has a reputation for liberal views but who has yet to be firmly linked with a security breach. I think it best that you seek Mr. Hoover's advice in this instance while avoiding any specific comments pro or con and especially avoiding any opinions on this matter.

4. Request Mr. Hoover's advice on how to proceed with

5. Ask Mr. Hoover if he has any additional information or guidance which he feels would be helpful in this very difficult situation. Specifically you might inquire about the requirement for prolonging the taps, making it clear that the President wishes to terminate them as soon as possible. (I think in the case of Halperin and [DELETED] that they should be kept on for at least another two weeks so that a pattern of innocence can be firmly established.

**UNITED STATES GOVERNMENT**

DATE: June 20, 1969

TO: Mr. C. D. DeLoach

FROM: W. C. Sullivan

SUBJECT: COLONEL ALEXANDER HAIG
TECHNICAL SUPVEILLANCE
REQUEST

Relative to the extremely sensitive technical surveillances we have going on, there has been nothing of late relevant to the leaks. In view of this fact, I have suggested to Colonel Haig that he might want to consider discontinuing some of them. He agreed. Therefore, the three to be discontinued are [DELETED] and [DELETED]. The Attorney General will be notified by separate memoranda.

*RECOMMENDATIONS:*

(1) For the information of the Director.

(2) That this memorandum be returned to W. C. Sullivan to be retained with the rest of this extremely sensitive material.

WCS:lml

July 8, 1969

Dear Mr. Hoover:

In regard to our very sensitive coverage on Halperin of the National Security Council, et cetera, as I have previously stated nothing has come to light that is of significance from the standpoint of the leak in question. I am suggesting to Colonel Haig that some of this coverage be removed. I had previously suggested the removal of the coverage of [DELETED] and he agreed.

As we know Halperin cannot be trusted. We have learned enough already from the early coverage of him to conclude this. Since [DELETED] Halperin has said almost nothing on the telephone. My guess is that he assumes it is tapped. There is a marked contrast between his lengthy conversations before that time and almost no conversation now.

[DELETED]

I am making a careful over-all analysis of the aforementioned sensitive coverage and it will be submitted to you for whatever use you may decide to make of it.

/s/
WILLIAM C. SULLIVAN

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

August 1, 1969

Honorable Henry A. Kissinger
Assistant to the President
for National Security Affairs
The White House
Washington, D.C.

Dear Mr. Kissinger:

Previous communications have set out information which we obtained from extremely sensitive sources concerning contacts made by members of the White House staff.

There is enclosed a memorandum furnishing a resume of information obtained to date.

Sincerely yours,

/s/

J. EDGAR HOOVER

Enclosure

*MORTON H. HALPERIN*

[DELETED FROM THIS APPENDIX
BY STIPULATION]

On May 27, 1969, Henry Brandon asked Halperin to track the Rusk memo about "Don't Go In." He also asked Halperin whether he had any comments on peace or not and Halperin replied none beyond those he gave Brandon "the other night." Subsequently, Halperin spoke to a Dr.

Gilm (phonetic) who is probably identical with Dr. Leslie H. Gelb, a former Deputy Assistant Secretary of Defense for Policy Planning and Arms Control, who is now connected with the Brookings Institution, during which Gilm and Halperin agreed that they were in favor of the United States using force to repel the Soviets the next time they invaded any European country. Gilm said that "they" are going to wait until all the subversive elements in the Administration are dangling by their last string and then they will move in and cart them away. Gilm also said "They don't believe in the policies being pursued, they're not going to start fighting them." Halperin commented that they had moved to the joint staff position on all issues and told Gilm about "our supplemental fiasco."

According to Halperin, the Secretary of Defense sent a memo to the Budget Director to put in the Budget and to announce in the President's aid message. He said the Secretary had not told the State Department about it and that the Budget Bureau recommended against it as did Kissinger's staff, although Kissinger recommended it. He said that the President approved it, but that the Undersecretary of Defense Packard sent a memo to the President pointing out that it would not get through Congress and, therefore, the President should not ask for it. Based on this, the President decided not to ask for it. He said that he did not know who wrote the memo for Packard.

Halperin then asked about the Rusk memo and was told by Gilm that it was not a memo, but a 1961 cable, and was in connection with stepping up the number of advisors (probably in Vietnam).

Halperin then said that "We are waiting for the propitious international climate regarding the arms talks," and that the committee was supposed to meet to approve a report which the National Security Council (NSC) will discuss after the President gets back. He said that the NSC staff was hostile to the report and that Henry has been convinced that there is no strategic rationale for an arms control view. He said that Henry has told reporters and senators that they will be embarrassed in opposing MRVs

because he is going to show "it's silly." Halperin said it was going to be an interesting battle by the State Department against Defense and the White House.

On July 10, 1969, Halperin told Brandon that the Premier of South Vietnam was making a speech that night and that the South Vietnamese Ambassador would make a press release. He said the speech and the press release would offer to let the National Liberation Front participate in elections. Brandon mentioned the President's trip to Romania and the fact that the President had received no written invitation. Halperin commented that the President assumes he has an invitation from everyone. He then agreed to help Brandon on a speech concerning the long-range influence of domestic affairs on American foreign policy. He arranged to have dinner with Brandon on the evening of July 16, 1969.

During a contact with Jay (probably Jeremy Stone) Jay stated he was leaving for Miami to speak before the New Party of Florida. Jay said that he contemplated a series of papers on "Arms Control and the Political Process." Halperin commented that a format of specific issues would be better. They agreed that Kennedy's office had placed various "professional documents" in the "Congressional Record" regarding the ABM. Halperin felt that the proponents of the President's plan were "in over their heads."

[DELETED FROM THIS APPENDIX BY STIPULATION]

DO NOT FILE

Date: September 15, 1969

To: Mr. C. D. DeLoach

From: W. C. Sullivan

Subject: SENSITIVE WHITE HOUSE TECHNICAL SURVEILLANCES

The Director has asked that we identify the sensitive technical surveillances which we have had in effect for a short period of time at the request of the White House.

At the request of Dr. Kissinger's office, we have surveillances in effect at this time on [redacted] and Morton Halperin, [redacted] Colonel Alexander Haig of Dr. Kissinger's office has indicated that Dr. Kissinger desires all surveillances discontinued except those on Morton Halperin and [redacted]

In this connection, there is attached a suggested memorandum to the Attorney General advising of the discontinuance of the surveillances on [redacted]

At the request of the Attorney General, who instructed that reports in this connection be sent to him and to the Honorable John D. Ehrlichman, Counsel to the President, we have a telephone, as well as physical, surveillance on [redacted] By memorandum dated 9/8/69 we advised the Attorney General that these surveillances were producing no information of pertinence and asked if they should be discontinued. The Attorney General has not as yet responded and, accordingly, we are separately writing a follow-up memorandum to the Attorney General pointing out the manpower requirements in this kind of surveillance and asking for an early decision as to whether or not these surveillances should be discontinued.

(49)

ACTION:

Attached is a suggested memorandum to the Attorney General advising of the discontinuance of the telephone surveillance with reference to [redacted]

JAS:mls
Enclosure

DO NOT FILE

NOT RECORDED

JUN 12 1973

188

2-Orig. and 1
1-yellow

The Attorney General

September 15, 1969

Director, FBI

(5D)

COLONEL ALEXANDER HAIG
REQUEST FOR TECHNICAL SURVEILLANCES

Reference is made to prior correspondence concerning the telephone surveillances which we have had in operation at the request of Dr. Henry Kissinger at the White House.

According to Colonel Alexander Haig, Dr. Kissinger has now advised that he desires all such surveillances installed at his request discontinued except the ones with reference to Morton Halperin and [redacted]. Accordingly, the surveillances on [redacted] are being discontinued today.

| SENT FROM D. O. |
| --- |
| TIME |
| DATE |
| BY |

JAS:mls (3)
(Classified SECRET because unauthorized disclosure could adversely affect national security.)

NOT RECORDED
JUN 12 1973

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

189

THE WHITE HOUSE
WASHINGTON

October 31, 1969

MEMORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE DIRECTOR, CENTRAL INTELLIGENCE AGENCY
THE CHAIRMAN, JOINT CHIEFS OF STAFF
THE DIRECTOR, ARMS CONTROL AND DISARMAMENT AGENCY
THE DIRECTOR, UNITED STATES INFORMATION AGENCY
THE CHAIRMAN, ATOMIC ENERGY COMMISSION

SUBJECT: Avoidance of Leaks on SALT

As we enter SALT, it is of first importance that the security of our plans be maintained and that all in the Government speak with one voice.

The basic procedure for ensuring this was established in my directive of September 15, 1969, issued at Colordao Springs. The operative parts of this directive follow:

"1. Public Statements and Press Releases: Prior to release, all public communications on matters of known or potential Presidential interest must be carefully cleared by the White House (Assistant to the President for National Security) for consistency with Presidential policy and for coordination with the departments and agencies who share overlapping interests and responsibilities. Should there by any uncertainty as to Presidential or interdepartmental interest, it will be resolved in favor of clearance.

"2. Official communications: All official communications with policy implications must be cleared by the White House. When in doubt, the rule is that messages will be so cleared. This procedure requires close and confidential staff relationships at all levels between the White House and your Department as well as among departments."

In addition, for routine and purely operational matters relating to SALT, public and background statements and guidance for such statements, should be dealt with by the backstopping machinery which was established at my direction in Henry Kissinger's memorandum to the Under Secretary of State on September 6, 1969.

Leaks about SALT planning and divergent statements to the public, Congress or foreign governments can clearly endanger the national interest and security. Special precautions should therefore be taken to avoid unauthorized disclosures or renditions of the Administration's views that have not been approved by the procedures referred to above.

/s/RICHARD NIXON

December 29, 1969

Honorable Henry A. Kissinger
Assistant to the President
for National Security Affairs
The White House
Washington, D.C.

Dear Dr. Kissinger:

Previous communications have set forth information which we obtained from extremely sensitive sources concerning contacts made by Morton H. Halperin, a former White House staff member who is now employed by the Brookings Institution.

Halperin was recently in contact with an unidentified individual who told Halperin that he had received a call from Clark Clifford. Clifford is probably identical with the former Secretary of Defense. According to this individual he and Clifford discussed an article which Clifford may be preparing. He said that Clifford is concerned about "sharpening up his attack on Nixon" and that apparently

he had obtained "old Nixon statements," one being to the effect that President Thieu is one of the five greatest men of our time. Another statement is that Vietnam is one of the finest hours in United States history. He said that Clifford felt that whether the article will be published will depend on what alternative he, Clifford, has to offer and that Clifford asked him what alternative he could offer. This unidentified individual did not indicate what he told Clifford.

This individual also wondered whether he could ethically go to a meeting with "Henry" today, December 29, 1969, to discuss the same subject, as Tony Lake (phonetic) had told him "Henry" wants to see him then. He also told Halperin that an article may appear in "Life" magazine which would be followed by an interview of Clifford in "Time" magazine. Clifford then may appear on "Meet the Press." This individual then discussed the fact that he had to submit an outline of the article and an introduction to it to Clifford. He said that he had told Clifford that the main thrust of the article should be "everything out by the end of 1971," and that Clifford had not rejected this idea.

Sincerely yours,

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

January 8, 1970

MEMORANDUM FOR: MR. MAGRUDER

FROM: ALEXANDER P. BUTTERFIELD

RE: J. Edgar Hoover's December 29 Letter to the President Concerning Mort Halperin and Clark Clifford

It would be interesting to me—first of all—to go to Al Haig (not to Tony Lake) and find out who participated in Henry's December 29th meeting. If he had more than one group meeting on that day, you could say it is your understanding that this particular meeting concerned Vietnam and options to our future courses of action there.

I would want to get ahold of the speeches or talks in which Mr. Nixon made the statements mentioned in the second paragraph . . . in order to know and understand the context in which the statements were made.

Needless to say, this item is every bit as sensitive as the memorandum indicates.

The name of the game, of course, is to springload ourselves to a position from which we can effectively counter whatever tack Clifford takes . . . and it would appear that this memorandum provides the basic framework for his plan.

THE WHITE HOUSE
WASHINGTON

January 15, 1970

CONFIDENTIAL

MEMORANDUM FOR: H. R. HALDEMAN
JOHN D. EHRLICHMAN

FROM: JEB S. MAGRUDER

RE: Impending Article by Clark Clifford Against Our Policy in Vietnam

J. Edgar Hoover's memorandum to the President regarding the potential problem that is developing with Clark Clifford has been checked out thoroughly. He is going to write an article for LIFE that will be published within the next month. As far as we know, it will be a very strong article against our policy in Vietnam, utilizing quotes and information he has regarding the President, and probably suggesting complete troop withdrawal by the end of 1970.

We are in a position to counteract this article in any number of ways. It has been suggested that the best approach would be to run a simultaneous article in LOOK about our success in Vietnam by someone like Dean Acheson. I have asked Al Haig to see if this could be done. There might be other people who could also write similar articles. I am thinking particularly of Sir Robert Thompson.

We could also be prepared to launch an effective counteraction if we felt it was warranted, by utilizing Administration spokesmen on television, by letters to LIFE relating the true context of the President's remarks, or by relating some of Clifford's activities to the press that would indicate the hypocrisy of his position. It has also been suggested that doing nothing might be the most effective response. We do not have much time to develop countermeasures of the type I have indicated unless it is decided to go ahead. Please give me your opinion as to the correct approach as soon as possible.

CONFIDENTIAL

1 Work from DOD and the Last
by the Clifford Administration
a - Peek Visit to Hanoi [illegible]
re Vietnam to be along
with al
2 Key Dem Rivs involved.
3 Continue the effort to get support
HHH, Westmoreland
Acheson, Lodge.
et al
4. Activate the Democratic committees
5 A new release from DOD on
How the war started (undat
Names Who involved.
Etc, etc (the real decisions
of the Vietnam war).

THE WHITE HOUSE
WASHINGTON

January 12, 1970

MEMORANDUM FOR JEB MAGRUDER
FROM: JIM KEOGH
SUBJECT: The President's Remarks About Vietnam and President Thieu

On July 30, when the President was visiting United States troops at the headquarters of the First Infantry Division at Di An in Vietnam, he centered his remarks on the difficulties of the U.S. role in the war. In the course of these remarks, he praised the men for fighting on courageously despite divided opinion and a lack of understanding at home. He reaffirmed the American goal of bringing the war to an early end in a way that would enable the people of South Vietnam and of Asia to choose their own way and to have real peace. After commenting that this period of history probably will be remembered as the time when men landed on the Moon, he said: "But also out here in this dreary, difficult war, I think history will record that this may have been one of America's finest hours, because we took a difficult task and we succeded."

The following day, chatting with reporters on Air Force One, as he flew toward New Delhi, the President discussed his visit to Vietnam and expressed new praise and support for the Saigon Government. So far as I know, there is no transcript of these remarks, so we have no precise record of the President's words. However, Max Frankel of the *New York Times* reported: " . . . He called Mr. Thieu probably one of the four or five best political leaders in the world." Don Oberdorfer of the *Washington Post* wrote that he called President Thieu "one of the four or five best politicians in the world." The *Washington Star* put it this way: "He described Thieu as a very capable guy, an excellent politician—probably one of the four or five best in the world."

It seems to me that neither statement is particularly vulnerable when placed in context; the trouble is that they will be used out of context.

E

THE SUMMER WHITE HOUSE
SAN CLEMENTE, CALIFORNIA

H—

This is the kind of early warning we need more of—

Your game planners are now in an excellent position to map anticipatory action—

A kindred question — what is the plan when the VC mount GVN forces for the first

JOHN EHRLICHMAN

THE SUMMER WHITE HOUSE
SAN CLEMENTE, CALIFORNIA

time and the
concept of
"Vietnamization" is
under heavy
attack?

JOHN EHRLICHMAN

THE WHITE HOUSE
WASHINGTON

DATE _____

TO: M

FROM: BOB HALDEMAN

---

FYI _____ PLEASE HANDLE ✓

PLEASE REVIEW AND SEE ME _____

OTHER:

I agree with
this point.
Let's get going

H

Payment for
Dandurand
5/12/70

SENSITIVE TECHNICAL COVERAGE
AT REQUEST OF THE WHITE HOUSE

At the request of the White House, we have telephonic surveillances on [redacted] of the White House staff [redacted] approved by the Attorney General:

[redacted]

On May 12, 1970, Brigadier General Alexander M. Haig of Dr. Kissinger's staff, requested additional telephone surveillances on [redacted]

[redacted] requesting the Attorney General's approval of this coverage.

Since the President's announcement on April 30, 1970, of the invasion of Cambodia, we have received considerable information through these installations. For example, [redacted]

We learned through these sources that Halperin, who was serving as a consultant to the National Security Council, planned to resign to protest the invasion of Cambodia. He subsequently did resign. During conversations with other individuals Halperin indicated that he feels the President intends to attack North Vietnam and Laos and agreed to work with Senator Fulbright (D - Arkansas) in opposing the war. Halperin also stated he had contacted Kuntsler, who may be identical with William Kuntsler, the attorney for the individuals recently convicted for violation of the antiriot laws at Chicago, Illinois. Kuntsler allegedly is willing to join an "organization" being formed by Halperin and other individuals.

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[redacted]

ENCLOSURE

62-750-5-382

The above are the highlights received from this coverage during the past few days. It has received very limited dissemination going only to the President and Dr. Kissinger.

FOR DISSEMINATION

May 13, 1970

[redacted]

Memorandum to W. C. Sullivan: [redacted]

Following the Director's return from the White House, he called and issued some very specific instructions to me which I desire to pass on to you in a strictly personal and confidential manner. The Director may have called you about the same matters. Nevertheless, I think it wise for you personally to be acquainted with the instructions he gave me.

(1) [redacted]

(2) The Director desires that if you, Haynes, or anyone of us receives instructions from anyone at the White House in the future regarding the establishment of a "super secret technical surveillance" (of which you are personally familiar, i.e., calls from General Haig, Dr. Kissinger, et al.), we should immediately advise that person that the FBI will be glad to comply but that these instructions must be cleared with Mr. Haldeman before the FBI can take any action. The Director, of course, wants to be immediately notified when such requests are received from Mr. Haldeman.

(3) The products of such technical surveillance coverage, as mentioned in (2), should no longer be disseminated to the Attorney General or to anyone in the Department. As a matter of fact, dissemination is to be given only to Mr. Haldeman in the future. Dr. Kissinger nor anyone else at the White House is to receive such information directly from the FBI. The Director has specified that this instruction be meticulously followed inasmuch as the President is anxious to cut down leaks that are occurring at the present time. This, of course, applies only to the type of surveillance described above and not to the general run of information which we ordinarily disseminate on a daily basis.

[redacted] Continued.....Over

JUN 12 1973

JUN 12 1973

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[redacted]

Memorandum to W. C. Sullivan, May 13, 1970

(4) [redacted]

Please see to it that these instructions are carried out immediately. The Director specified that only you and I are to know of the above information. He, of course, will advise Mr. Tolson personally.

[redacted]

Sincerely,

C. D. DeLoach

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TO BE FURNISHED PLAINTIFF

**UNITED STATES GOVERNMENT**

**MEMORANDUM**

DATE: 5/15/70

*DO NOT FILE*

TO: MR. W.C. SULLIVAN
FROM: R.H. HAYNES
SUBJECT: TECHNICAL SURVEILLANCE REQUEST
WHITE HOUSE

In accordance with the Director's meeting with the President on 5/13/70, the results of very sensitive coverage requested by the National Security Council were personally delivered by liaison to Mr. H.R. Haldeman on 5/14/70.

Haldeman advised Liaison Supervisor R.H. Haynes that this material, at the President's specific instructions, was to be handed to him personally, and in the event of his absence, it was to be given sealed to his Assistant, Lawrence M. Higby. He instructed Higby, in the presence of the liaison Supervisor, that Higby was to hold it unopened for Haldeman.

Material previously furnished to General Haig for Dr. Kissinger would remain in that office. Haldeman advised that the material he receives would be kept in his personal safe in his office, and when he finished with specific items, he would return them to the Bureau through the same channels for destruction.

Haldeman stated that, in view of the fact that Kissinger would no longer be receiving this material, he would advise him on the evening of 5/14/70 of the President's instructions.

JULY 12, 1970
Sunday

Helpern has been
in California about
3 weeks and will stay
out there until at
least end of August.
I have tried to make
use of value in regard
to matters from Corona --
suggest consider this thing
closed.

THE WHITE HOUSE

WASHINGTON

December 21, 1970

MEMORANDUM FOR: The Secretary of State
The Secretary of Defense
The Attorney General
The Director, U.S. Arms Control and Disarmament Agency
The Chairman, Joint Chiefs of Staff
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration

SUBJECT: Disclosures of Classified Information and Coordination and Clearance of Official Statements

I am becoming increasingly concerned about the disclosure in public media of classified information bearing upon important aspects of national security, particularly that which tends to jeopardize intelligence sources and methods. Such disclosures present a serious threat to our national interests and I am determined that the practice of releasing such information without proper authorization will be brought to an end.

Executive Order 10501, of December 15, 1953, as amended, established regulations and procedures for safeguarding classified information, while especially sensitive data are protected by special systems of clearances.

I direct that immediate steps be taken within the jurisdiction of each addressee to ensure that existing regulations and procedures

DECLASSIFIED
Auth: Brent Scowcroft
Date: June 24, 1976
By:
NATIONAL SECURITY COUNCIL

designed to safeguard classified information be reviewed and strengthened where necessary. These regulations and procedures should assure that only those individuals with a demonstrated "need-to-know" receive classified information and that all recipients are constantly aware of the necessity to protect it from public disclosure. They should provide for an adequate security review of all statements and documents made public on subjects with important security connotations. Further, I wish responsible officials to take firm disciplinary action against individuals under their jurisdiction found responsible for careless or deliberate mishandling of classified information.

The Director of Central Intelligence has the statutory responsibility for the protection of intelligence sources and methods. Accordingly, I shall look to him to provide guidance in this field, especially through the machinery of the intelligence community. I shall expect him to keep me informed of developments and I wish department and agency heads to cooperate fully with him.

I also reaffirm the following instructions which I issued on September 1, 1969 concerning coordination and clearance of public statements and press releases and the necessity for White House clearance of all official communications having policy implications:

--"Public statements and press releases: Prior to release, all public communications on matters of known or potential Presidential interest must be carefully cleared by the White House (Assistant to the President for National Security) for consistency with Presidential policy and for coordination with the departments and agencies who share overlapping interests and responsibilities. Should there be any uncertainty as to Presidential or interdepartmental interest, it will be resolved in favor of clearance."

--"Official communications: All official communications with policy implications must be cleared by the White House. When in doubt, the rule is that messages will be so cleared. This procedure requires close and confidential staff relationships at all levels between the White House and your department as well as among departments."

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UNITED STATES GOVERNMENT

# *Memorandum* ROUTE IN ENVELOPE

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Dalbey
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Candy

TO : MR. TOLSON

DATE: 2/10/71

FROM : W. C. SULLIVAN

DO NOT FILE

JUNE

SUBJECT: SPECIAL COVERAGE AT THE REQUEST OF THE WHITE HOUSE

Pursuant to your request, the names of the men in question and the date that the coverage was put on is set forth below:

| SUBJECTS; | DATE COVERAGE INSTALLED |
|---|---|
| Morton H. Halperin, works at Brookings Institution | May 12, 1969 |

NOT RECORDED

JUN 12 1973

The Attorney General's approval in writing has been secured for each one.

Colonel Alexander M. Haig of Dr. Kissinger's office has in the past indicated that they intend to take some of these off. No definite word as yet has been received relative thereto.

CONTINUED - OVER

WCS:chs
(ORIGINAL ONLY)

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*RECOMMENDATION:*

For your information.

ROUTE IN ENVELOPE

DO NOT FILE

JUNE

February 11, 1971

MEMORANDUM FOR THE ATTORNEY GENERAL

RE: SPECIAL COVERAGE AT THE REQUEST OF THE WHITE HOUSE

Brigadier General Alexander M. Haig of Dr. Henry Kissinger's staff at the White House, has requested that this special coverage be discontinued.

In accordance with his request, telephone surveillances on the following individuals were discontinued on February 10, 1971:

[redacted] Morton Halperin, [redacted]

Respectfully,

SENT FROM D. O.
TIME 4:54 PM
DATE 2-11-71
BY

John Edgar Hoover
Director

WCS:chs
(ORIGINAL AND YELLOW)

NOTE:

Attorney General previously approved the above telephone surveillances which were installed at the request of the White House. The White House has now requested they be discontinued.

Tolson
Bellmon
Nohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Dalbey
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

MAIL ROOM ☐ TELETYPE UNIT ☐

NOT RECORDED
JUN 12 1973

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DS

Hearings before the Committee on Foreign Relations of the Senate, 93d Cong., 2d Sess. (1974)

**PRESIDENT'S MAY 22, 1973 STATEMENT ON WIRETAPS**

The Chairman. For the record, I want the record to show that in the May 22, 1973 statement, the President said this, and I quote from that:

> "In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February 1971. Fewer than 20 wiretaps, of varying duration, were involved. They produced important leads that made it possible to tighten security of highly sensitive materials. I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with longstanding precedent."

[The information referred to follows:]

> [Excerpt from "The Watergate Investigation," Statements by the President. May 22, 1973, *Weekly Compilation of Presidential Documents*, May 28, 1973, Vol. 9, No. 211
>
> Here is the background of these three security operations initiated in my Administration.
>
> * * * * *

## 1969 WIRETAPS

By mid-1960, my Administration had begun a number of highly sensitive foreign policy initiatives. They were aimed at ending the war in Vietnam, achieving a settlement in the Middle East, limiting nuclear arms and establishing new relationships among the great powers. These involved highly secret diplomacy. They were closely interrelated. Leaks of secret information about any one could endanger all.

Exactly that happened. News accounts appeared in 1969, which were obviously based on leaks—some of them extensive and detailed—by people having access to the most highly classified security materials.

There was no way to carry forward these diplomatic initiatives unless further leaks could be prevented. This required finding the source of the leaks.

In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February 1971. Fewer than 20 taps of various duration were involved. They produced important leads that made it possible to tighten the security of highly sensitive materials. I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with longstanding precedent.

The persons who were subject to these wiretaps were determined through coordination among the Director of the FBI, my Assistant for National Security Affairs, and the Attorney General. Those wiretapped were selected on the basis of access to the information leaked, material in security files, and evidence that developed as the inquiry proceeded.

Information thus obtained was made available to senior officials responsible for national security matters in order to curtail further leaks.

* * * * *

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET. AL., DEFENDANTS.

---

**AFFIDAVIT**

City of New York SS:

State of New York

MORTON H. HALPERIN, being duly sworn, deposes and says

1. On May 9, 1969, in Key Biscayne, Florida, defendant Henry A. Kissinger informed me that I was suspected of leaking a story by Mr. William A. Beecher which had appeared in the *New York Times* several days before. The story reported that the United States had begun bombing Cambodia and provided some details of the bombing operation. Kissinger asked me whether I had provided any information to Beecher. I assured him that I had not. I pointed out that I could not have been the source of most of the information in the article since I had not had access to the information and did not know whether the story was accurate or not. Kissinger was well aware of this since everything I knew about the bombing, essential only the single fact that the United States had bombed Cambodia, I had learned in conversation with Kissinger. I had not had and never had access to any documents related to the bombing.

2. Kissinger indicated that he accepted my assurances but that others would not. He noted that as he had informed me previously, a number of high level figures in

the Nixon Administration were suspicious of my political views and considered me disloyal to the administration. He informed me that for a period of time he would not give me access to any of the more sensitive information regarding national security matters. That way, he stated, if any information leaked I could not be blamed.

3. This period lasted until I resigned from the staff of the National Security Council in September of 1969. As of May 9, 1969 I was given no access to sensitive material including information relating to private Vietnam negotiations or negotiations with the People's Republic of China, White House negotiations with the Soviet Union, and plans for troop withdrawals from Vietnam. Kissinger and defendant Alexander Haig were fully aware of this since they personally controlled access to such information.* From May 9, 1969 on, my access was limited to information available to hundreds of others in the White House and the department of the Executive Branch. A number of other officials had access to the information about the bombing of Cambodia and, at least according to press reports, were not tapped. On the National Security Council staff, the members included Henry A. Kissinger, Alexander Haig, and Lawrence Eagleburger. Other officials, unknown to me, in the Departments of State and Defense also had access to this information. Information leaked to the press on other subjects was also available to a number of officials.

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*On one such matter—private Vietnam negotiations—Haig has so testified under oath at the so-called Pentagon Papers trial. He testified: "I would say from the period January '69 until his departure from the staff in August '69 Mr. Haperin had regular access to the regular report traffic on the conduct of the formal negotiations withing the Paris framework which had been established for some period and which was reconvened that year. He would have had some access to those as a member of the staff involved in Southeast Asian and other affairs. He would not have had access to the more sensitive, third-party contacts which may have occurred during that period." (Transcript, p. 10,925.)

4. On August 6, 1969, I informed Kissinger of my desire to leave the National Security Council staff as soon as possible. At his request, my departure was delayed until September 19, 1969. Also at his request I agreed to become a consultant to him.

5. On September 19, 1969 I left the NSC staff and was notified that I had been appointed a consultant effective September 21, 1969.

6. On May 4, 1970, I sent Kissinger a letter resigning as a consultant. On May 13, I received a letter from Kissinger "confirm[ing] that you will no longer be carried on the rolls of the National Security Council staff for possible future consultation."

7. During the period September 20, 1969 to May 13, I had no access to any classified information. This was known to Kissinger and Haig since only they would have given me access. (See also Haig testimony quoted above.)

8. During this period, I was employed by the National Security Council for only one day. On that day I wrote, at Kissinger's request, a memorandum on Vietnam. I had no access to classified information in the course of writing that paper.

9. After leaving the staff of the National Security in the period of September 1967 to February 1971, I engaged in a number of activities reflecting my political beliefs. I wrote articles for newspapers. I consulted with Senators, Congressmen, and their staff on what positions they might take on public issues including Vietnam. In particular, I consulted with a number of people advising Senator Edmund Muskie in connection with his possible candidacy for President of the United States. At the time of the American invasion of Cambodia in the Spring of 1970, I consulted with a number of American citizens about various potential forms of citizen activity to protest American policy. Discussions related to all of these activities took place on my home telephone.

/s/ _____
MORTON H. HALPERIN

Subscribed and sworn to
This 12th day of November, 1973

/s/ _____
LEON FREEDMAN
*Notary Public*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1879-72

DANIEL ELLSBERG, ET AL., PLAINTIFFS,

*v.*

JOHN N. MITCHELL, ET AL., DEFENDANTS.

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## AFFIDAVIT OF HENRY A. KISSINGER

City of Washington

SS.

District of Columbia

HENRY A. KISSINGER, being duly sworn, deposes and says:

1. I am the Secretary of State of the United States and am also Assistant to the President for National Security Affairs, a position I have held since January 20, 1969.

2. I submit this affidavit in connection with defendants' opposition to the plaintiffs' motion to compel discovery of the defendants in the present action, and specifically for the purpose of providing the Court with a statement of the events pertinent to the electronic surveillance of Dr. Morton H. Halperin, which I understand was instituted by the Federal Bureau of Investigation on May 12, 1969, and terminated on February 10, 1971.

3. The early months of this Administration were particularly sensitive times with regard to the formulation of this country's foreign policies and the establishment of our future relations with other nations. During this period, policies were being considered which would establish the fundamental approach to major foreign policy issues such as the United States' strategic posture, Strategic Arms Limitation Talks (SALT), Vietnam and many other national security issues. Because of the sensitive nature of

these matters, the secrecy of each was of vital importance and the success or failure of each program turned in many instances upon the maintenance of the necessary security. However, notwithstanding the critical need for such security during this period, we were confronted with leaks to the press of information of the greatest improtance to the national security. These leaks included discussions of National Security Council deliberations, intelligence information, negotiating positions and specific military operations. In several cases, significant consequences resulted from these premature releases of internal policy deliberations. In addition, the release of such classified information had obvious benefit for potential enemies of this country. Of particular concern to the President were news leaks which occurred from early April until June of 1969, involving Vietnam policy, strategic arms and the Okinawan reversion.

4. With respect to Vietnam, where the President was determining his broad policy for dealing with the war, both as to negotiating positions and military strategy, news leaks regarding such plans appeared frequently in the press. For example, following a meeting of the National Security Council on March 28, 1969, the President directed that studies be conducted on several subjects associated with a settlement of the war in Vietnam, including a study of alternatives for a unilateral withdrawal. The study directive was issued on April 1, 1969, and within a week thereafter an article appeared in the *New York Times* on April 6, 1969, by Max Frankel revealing that the Government was considering unilateral withdrawal from Vietnam. Similarly, in May of 1969 it was decided that the United States could make an initial troop withdrawal from Vietnam, and shortly thereafter articles appeared by George Sherman in the June 3, 1969, edition of *The Evening Star*, and by Hedrick Smith in the June 4, 1969, *New York Times*, forecasting this decision and announcing that it would be made public following the President's meeting with South Vientam's President Nguyen Van Thieu on Midway Island the following Sunday.

Each of the above disclosures was extremely damaging with respect to this Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, the decision was extremely important in that it reflected a fundamental change in United States policy. For the South Vietnamese government to hear publicly of our apparent willingness to consider unilateral withdrawals, without first discussing such an approach with them, raised a serious question as to our reliability and credibility as an ally. Similarly, though in a reverse context, these disclosures likewise impaired our ability to carry on private discussions with the North Vietnamese, because of their concern that negotiations could not, in fact, be conducted in absolute secrecy.

Militarily, a decision was made in early March of 1969 to conduct a series of B-52 bombing raids on North Vietnamese sanctuaries just inside the border of Cambodia. Because of the sensitivity associated with Cambodian neutrality and the tacit support for such action by Cambodia's Prince Norodom Sihanouk, it was extremely important for diplomatic reasons that these raids remain secret and stringent security precautions were taken to ensure that this military operation was not publicly disclosed. Yet notwithstanding all such efforts to maintain the security of this operation, an article appeared in the May 9, 1969, edition of the *New York Times* by William Beecher, attributed to Administration sources, accurately summarizing the conduct of these raids. While there were obvious adverse diplomatic repercussions from this disclosure, its greatest effect was to raise a serious question in the mind of the President as to the ability of the Government to maintain the necessary security required for this and other sensitive military and diplomatic operations, and whether in the future he could make critical foreign policy decisions on the basis of full and frank discussions.

5. Several other examples of critically sensitive press disclosures occurred during this period with regard to the development of our position on strategic arms in preparation for SALT negotiations with the Soviet Union.

First, on January 20, 1969, the President directed that an overall study be conducted on the United States' strategic force posture. A fundamental requirement of this study was to determine what programs should be adopted to ensure the credibility of this country's deterrent capability. The study was conducted and included an analysis of five options to support strategies ranging from emphasis on offensive capabilities at one end, to heavy reliance on anti-ballistic missile systems at the other. Cost estimates for each of the alternative force postures were included. Notwithstanding the obvious need for strict security in the preparation and handling of this report, an article by William Beecher appeared in the *New York Times* on May 1, 1969—prior to consideration of the report by the National Security Council—setting forth an accurate description of the options as well as a close estimate of the range of costs involved.

In addition to the above study, the United States Intelligence Board (USIB), composed of representatives of the intelligence community, had been engaged for several months in an analysis of the Soviet Union's testing of missiles, and in early June of 1969 concluded their review and issued a report, which was extremely closely held, setting forth their estimate of the Soviet Union's strategic strength and possible first strike capability. Because the USIB's assessment varied in its degrees of certainty from earlier statements and reports made by other defense experts in support of the need for the Safeguard ABM System, any public disclosure of the USIB report would provide a useful signal to the Soviet Union as to the disagreement within our Government and the efficacy of our intelligence system. It would also prematurely reveal the intelligence basis on which we were developing our position for the impending strategic arms talks. On June 18, 1969, the fact of the interagency disagreement and opposing agency positions were printed in a *New York Times* article by Peter Grose.

Each of these disclosures was of the most extreme gravity. As presentations of the government's thinking on

these key issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessments of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capabilities. Perhaps more important, evidence of leaks of such closely held intelligence assessments raised serious questions as to the integrity of the USIB and created severe doubts about our ability to maintain security in deliberations on national security policy.

6. Also of serious concern during this period was a press leak involving this country's policy toward Japan and our strategy for negotiations on the reversion of Okinawa. Following a late April meeting of the National Security Council, a National Security Decision Memorandum was issued on May 28, 1969, outlining this country's policy toward Japan, and particularly our negotiating strategy with respect to the reversion of Okinawa. This memorandum set forth our desire to retain nuclear weapons on Okinawa but stated, as a fallback position, that we would be prepared to consider the withdrawal of these weapons while retaining the storage and transit rights. Shortly after this memorandum was completed, and prior to the negotiations with the Japanese, an article by Hedrick Smith appeared in the *New York Times* on June 3, 1969, stating that the President had decided to remove nuclear weapons from Okinawa once an overall plan to return the Island had been agreed upon. The article noted that the President's decision had not yet been communicated formally to the Japanese Government. The consequences of this disclosure, attributed to well-placed informants, in terms of compromising negotiating tactics, prejudicing the Government's interest, and complicating our relations with Japan were obvious, and clearly preempted any opportunity we might have had for obtaining a more favorable outcome during our negotiations with the Japanese.

7. In early May, 1969, after the first several unauthorized disclosures of classified information had occurred, the President consulted the then Director of the Federal

Bureau of Investigation, J. Edgar Hoover, and the then Attorney General of the United States, John N. Mitchell, concerning methods to be employed to deal with the problem. The President was told by Mr. Hoover that the most effective method was that which had been followed in previous Administrations, namely the conduct of electronic surveillance in accordance with specific procedures. The President was assured by Attorney General Mitchell that such action would be in compliance with law.

My office was required by the President to submit the names of those officials who had had access to the information which had been leaked. Obviously, my office was a natural place for this information to exist; and Dr. Halperin, in his position as Chief of the National Security Council Planning Group, was unquestionably one of several persons who had had access to such information.

8. As a result of this position, which he held until September 30, 1969, and as a consultant to the National Security Council until May 13, 1970, Dr. Halperin received extensive exposure to classified information, much of which remains confidential to this day.

Dr. Halperin was involved in the organization, substantive preparation and processing of National Security Council policy reviews, and his assignments gave him access to the fundamental policy issues during the formative and crucial early months of 1969. During the period from January until May 1969, Dr. Halperin regularly participated, in conjunction with the responsible staff area specialists, in sensitive National Security Council studies. In addition, he also frequently attended National Security Council Review Group Meetings, which I chaired, and which considered a variety of subjects, including the United States strategic posture, strategic arms negotiations, Vietnam, the Middle East and United States trade policies, to name only a few. Dr. Halperin also participated in the preparation of papers for the President's use at meetings with the National Security Council covering a wide range of issues. While performing the above responsibilities, Dr. Halperin devoted particular attention to

several specialty areas, including the United States' strategic posture, the SALT negotiations and the war in Vietnam. To maintain his currency in each of these areas, Dr. Halperin regularly received cables to and from our Embassies, including limited distribution cables on Vietnam and the Paris negotiations, as well as daily intelligence reports and sensitive intelligence publications.

9. Dr. Halperin's name and the names of other individuals were provided to the Federal Bureau of Investigation for their investigation. On May 13, 1969, I received a letter from Director Hoover indicating that on the basis of independent information available to him, it appeared probable that recent leaks had come "from a staff member such as Morton H. Halperin of the National Security Council." Director Hoover further stated specifically that "we should not ignore the possibility that Halperin . . . could be the source of a leak" and that he therefore had alerted the Bureau's most sensitive sources (i.e., electronic surveillance).

10. However, notwithstanding the investigation of Dr. Halperin and others being conducted by the Federal Bureau of Investigation, and additional governmental efforts to curb the unauthorized disclosure of classified information, press leaks involving Southeast Asia, SALT, the Middle East, NATO and other national security matters continued through 1969, 1970 and 1971. Such disclosures necessitated issuing a memorandum on May 23, 1970, to several government agencies regarding the SALT negotiations, in which I stated that:

> Vital national interests are being jeopardized by leaks to the press concerning the strategic arms limitation talks. No one in the Government is authorized to devulge the United States or Soviet positions to the press or to speculate concerning United States' intentions with respect to the negotiations.
>
> The President has directed that immediate steps be taken to ensure that standing directives concerning leaks are adhered to without exception by personnel under our jurisdictions. Prompt and severe disciplinary action is to be taken in the event of violations.

Throughout this period, leaks of information which could have serious adverse effects upon our national security and our relations with our allies continued.

11. From the commencement of the electronic surveillance of Dr. Halperin in May of 1969 until May, 1970, I was provided periodic summaries of the information gained from this surveillance of his conversations which the Federal Bureau of Investigation determined to involve national security. However, in late May 1970, it was decided that such reports would be directed to the office of Mr. H. R. Haldeman, then an Assistant to the President, and that Mr. Haldeman would advise the President, General Haig, then an assistant on my staff, or myself, of information that required our attention. In addition, an informal liaison was maintained between Mr. Sullivan of the Federal Bureau of Investigations and General Haig of my staff, and if the surveillance of Dr. Halperin developed information of sufficient gravity, Mr. Sullivan would call General Haig and either inform him of that fact or call his attention to the fact that a report containing that information had been sent to Mr. Haldeman. I remember only one such event, but there may have been others.

/s/ _____

HENRY A. KISSINGER

Subscribed and sworn to before me this 26th day of November, 1973.

/s/ _____

JOHN JOSPEH RATELFORD
*Notary Public*

My Commission expires May 31, 1979.

**EXCERPTS FROM PLAINTIFFS' ANSWERS TO FEDERAL DEFENDANTS' FIRST SET OF INTERROGATORIES.**

Their contacts with foreign nationals were of a strictly professional personal and social character. The details of such contacts are irrelevant to this litigation.

*Question 36.*

The observations in the first paragraph of the plaintiffs' response to question 35 apply here also.

Again, in fact, and without conceding the propriety of the question, plaintiffs made certain social and professional trips to foreign countries during the period January 1969 through February 10, 1971. None of those trips involved any contacts with foreign agents or agencies that were in any sense collaborative.

*Question 37.*

Each plaintiff claims damages from each defendant under 18 U.S.C. section 2520 for all days from May 9, 1969 through February 10, 1971, inclusive, and for each date thereafter on which there was a use or disclosure of contents of their conversations. Depositions of C & P employee Hampton and F.B.I. special agent Belter and the answers of the federal defendants and C & P Telephone Company establish that the electronic equipment and personnel used to intercept and monitor their telephone conversations was installed and operating during the entire period May 9, 1969, through February 10, inclusive. F.B.I. agents Belter and Barnhardt testified in deposition the F.B.I. logs are not a complete record of all conversations overheard. Nevertheless, because the logs are records of an unknown portion of plaintiffs' intercepted conversations, plaintiffs have prepared a chart summarizing certain information reflected in the logs. Plaintiffs will make the chart available for inspection by counsel for the federal and other defendants. Because the chart reflects identifications given by the FBI to persons overheard on plaintiffs' telephone were not parties to this case, plaintiffs

believe the chart is within the terms of the protective order.

For each of the 638 conversations whose substance purports to have been recorded in whole or in part, the chart indicates the identity of the parties as reflected in the logs, whether the record content in whole or in part in quotations, and other notations, such as "no pertinent activity." The chart indicates that Morton Halperin was party to 359 (56%) of the calls recorded in the logs, of which 173 (27%) were conversations between plaintiffs Morton and Halperin and 182 (26%) were between Morton Halperin and persons not parties to this lawsuit. Two hundred seventy-two (43%) were conversations between Ina Halperin and persons not parties to this lawsuit. Morton Halperin was overheard on 253 separate dates; Ina Halperin was overheard on 263 separate dates. David, Mark, and Gary Halperin were each overheard in at least one conversation recorded in the logs where they are specifically identified.

As to post-February 10, 1971 uses and disclosures, such use and disclosure clearly took place on various dates in June–August 1971 in connection with the removal of the logs from the FBI to the White House and the Pentagon Papers investigation, on February 25, 1973 in a conversation between Mr. Nixon and John Dean, and in various press statements in May–June 1973 and thereafter, some purportedly anonymous, on the results of the tap. Plaintiffs have sought additional documents from Mr. Nixon and the federal defendants relevant to post-termination use of the taps and are continuing discovery (from Mr. Nixon and Mr. Kissinger especially) as to this issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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## FEDERAL DEFENDANTS' STATEMENT OF MATERIAL FACTS

Come now the Federal defendants, by their undersigned attorney and pursuant to Local Rule 1-9(g), Rules of the United States District Court for the District of Columbia, and in support of Federal Defendants' Motion for Summary Judgment, hereby state the following to be material facts as to which there is not genuine issue:

1. Richard M. Nixon was President of the United States from January 21, 1969 to August 9, 1974. John N. Mitchell was Attorney General of the United States from January 21, 1969 to March 2, 1972. Henry A. Kissinger was President Nixon's National Security Adviser from January 20, 1969 to August 9, 1974. J. Edgar Hoover was Director of the Federal Bureau of Investigation from May 10, 1924 until May 2, 1972. H. R. Haldeman was Assistant to the President from January 21, 1969 to April 30, 1973. General Alexander Haig was assigned in January 1969 from the Military Academy to the White House to aid in organizing the National Security Council staff, where he remained until October 1974. William C. Sullivan was in charge of the Domestic Intelligence Division, Federal Bureau of Investigation, from June 1961 to August 1970 and subsequently was Assistant to the Director until October 1971. Robert C. Mardian was an Assistant Attorney General in charge of the Internal Security Division, United States Department of Justice, from November 12, 1970 to

April 26, 1972. Clarence M. Kelley is the Director of the Federal Bureau of Investigation, a position which he has held since July 9, 1973.

2. During the early months of the Nixon Administration, it was determined that new direction should be taken with regard to the United States' foreign policies, particularly in Vietnam, China, the Soviet Union, the Mid-East and Europe. In order to effect the new foreign policies, President Nixon re-established the National Security Council (NSC) and appointed Dr. Henry Kissinger as his National Security Advisor. [Nixon Dep. at 10–13, 38–39.]

3. Because of the sensitivity of many aspects of the new foreign policies, the President and his National Security Advisor believed that secrecy of consideration and decision on these matters was imperative. [Kissinger Res. at 1.]

4. There was concern that because the NSC staff members had access to information about these highly sensitive foreign policy initiatives that such information could be "leaked." [Nixon Dep. at 12–14.] Leaks of information occurred from early 1969 through 1971. [Kissinger Res. at 10–13; Kissinger Affidavit, *Ellsberg* v. *Mitchell* C.A. 1879–72 (Def. Exb. 1).] The leaks included information from the National Security Council. [Kissinger Res. at 10–13, Nixon Dep. at 16–17.]

5. The President and Dr. Kissinger, his National Security Advisor, believed these disclosures were severely damaging to the planning and conduct of foreign affairs initiatives needed to protect the national security. [Def. Exb. 1, Kissinger Res. at 2; Nixon Dep. at 22, 28–29 45–51, 101–02.]

6. The President discussed the problem of unauthorized disclosure with, among others, Dr. Kissinger; John Mitchell, Attorney General and J. Edgar Hoover, Director of the Federal Bureau of Investigation. The discussions were an effort to determine how to find who was leaking and to take appropriate steps to stop the leaks. [Nixon Dep. at

15, 19-22, 25-26; Kissinger Res. at 1-3, 17-19; Kissinger Dep. at 21-29; Mitchell Dep. at 19-26.]

7. During the course of these discussions the President was advised by Director Hoover that the installation of electronic surveillance was the most effective method of determing the sources of leaks. [Nixon Dep. at 19-26; Mitchell Dep. at 20-21; Kissinger Res. at 18.]

8. The President requested the Attorney General's opinion as to the President's powers to authorize electronic surveillance. Pursuant to 28 U.S.C. § 511, the Attorney General rendered his opinion that electronic surveillance for national security purposes did not require judicial authorization. [Nixon Dep. at 20, 84; Mitchell Dep. at 76-79; 81-83, 84-85, 95; Kissinger Res. at 7, 18.]

9. At the time the Attorney General rendered his legal opinion, the Supreme Court had expressly reserved ruling on the issue of whether electronic surveillances conducted for national security purposes required judicial authorization [*Katz* v. *United States*, 389 U.S. 347, 358 n. 23 (1967)]. Mr. Justice White had suggested that the Court should not require the warrant procedure and the magistrate's judgment and that a surveillance would be constitutional ". . . if the President of the United States or his chief legal officer, the Attorney General, has considered the requirements of national security electronic surveillance as reasonable" [*Katz* v. *United States*, *supra*, at 364 (White, J. concurring)].

10. Additionally, prior to the decision of the Supreme Court in *United States* v. *United States District Court*, 407 U.S. 297 (1972) *(Keith)*, the Attorney General had taken the legal position that the exemption of national security surveillance in 18 U.S.C. § 2511(3) from the strictures of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 [18 U.S.C. §§ 2510-20] constituted congressional confirmation and authorization of the President's powers under Article II of the Constitution to authorize electronic surveillance for national security purposes without first obtaining judicial authorization. [Mitchell Affidavit, Def. Exb. 11.]

11. Further, at the time the surveillance at bar was active, seven Federal courts ruling on the issue of whether the President required judicial authorization to conduct electronic surveillance for national security purposes had held no authorization was required. [*United States* v. *Clay*, Criminal No. 67-H-94 (S.D. Tex., July 14, 1969) (quoted in *Brown, infra); United States* v. *Stone*, 305 F. Supp. 75 (D.D.C. 1969); *United States* v. *O'Baugh*, 304 F. Supp. 767 (D.D.C. 1969); *United States* v. *Dellinger*, No. 69 CR 180 (N.D. Ill., Feb. 20, 1970) (Def. Exb. 9); *United States* v. *Brown*, 317 F. Supp. 531 (E.D. La. 1970) *United States* v. *Butenko*, 318 F. Supp. 316 (D. N.J. 1970); *United States* v. *O'Neal*, No. KC CR 1204 (D. Kan. Sept. 1, 1970) (Def. Exb. 10).] The only court to rule to the contrary involved a domestic security electronic surveillance, which the court distinguished from surveillance prompted by foreign affairs concerns; and even that decision did not come until approximately a month before the surveillance at bar was discontinued. [*United States* v. *Smith*, 321 F. Supp. 424 (C.D. Cal. 1971).]

12. In affirming the constitutionality of warrantless national security electronic surveillance, the above-cited courts also found that such surveillances were exempted from the standards and procedures of Title III by 18 U.S.C. § 2511(3). And in *United States* v. *Smith, supra*, at 425, the Central District of California held that the domestic security surveillance there was not subject to Title III's warrant standards and procedures, even though the Court held that type of surveillance required judicial authorization under the Fourth Amendment.

13. Further discussion as set forth in 5–8, *supra*, established a criteria for determination of individuals who would be subjects to such electronic surveillance to determine the source of leaks and to stop the leaks. It was decided that subjects would be taken from among (1) those who had access to information which had leaked; (2) those who had unfavorable information in their security files; and (3) those whose names appeared as sources or recipients of leaked information in Federal Bureau of Investi-

gation investigations. [Nixon Dep. at 24, 61; Kissinger Res. at 18; Kissinger Dep. at 28, 62; Mitchell Dep. at 21-22.]

14. It was also determined that Dr. Kissinger would provide Director Hoover with names of those persons who had access to leaked information. [Kissinger Res. at 8, 9; Kissinger Dep. at 31; Nixon Dep. at 24, 85; Mitchell Dep. at 25.]

15. The program of surveillance was to be activated in the event further leaks of information bearing on foreign affairs necessitated a security investigation. [Kissinger Dep. at 42.]

16. The program was activated, at the direction of the President on May 9, 1969 when the *New York Times* published an article by William Beecher revealing the American bombing of North Vietnamese occupied territory in Cambodia. This leak was regarded by the President and Dr. Kissinger as extremely detrimental to the United States. [Nixon Dep. at 22.]

17. Among those persons initially designated as subjects for electronic surveillance was Morton H. Halperin. Halperin was a member of the National Security Council staff from January 21, 1969 to September 20, 1969, and was a consultant to the Council until May 13, 1970. [Halperin Dep. at 20-21, 118-19.] Halperin fit the criteria established since he had access to information which had been leaked and because his security files contained certain unfavorable information. [Kissinger Dep. at 47-49; Kissinger Res. at 23; Def. Exb. 1; Nixon Dep. at 34-35; Mitchell Dep. at 21-22; Ash Affidavit, Def. Exb. 2.]

18. Electronic surveillance was placed on the home telephone of Morton Halperin on May 9, 1969. [Federal defendants' Answer to Second Amended Complaint, ¶ 22.]

19. Because of the sensitivity of the program, that is, ascertaining the identity or identities of those in high councils of government leaking information affecting the national security, efforts were made to handle the program with a minimum of paper which could similarly be

the subject of leaks to avoid chilling discussions within the government as well as inhibiting discussion with foreign leaders. [Haig Dep. at 12; Nixon Dep. at 21.] The Federal Bureau of Investigation was urged to maintain all information emanating from the surveillance on a "need to know" basis. Director Hoover decided one master copy of the logs and summaries of the log material would be prepared. [Sullivan Dep. at 42-43.]

20. The President relied on Director Hoover for the conduct of the investigation, "he being an expert in this field." [Nixon Dep. at 59, 89.]

21. The summaries of the log material were prepared, in major part, by Bernard Wells, an employee of the Federal Bureau of Investigation, for review of Federal defendant William C. Sullivan Assistant to the Director in charge of the Domestic Intelligence Division, Federal Bureau of Investigation, and final approval and signature of Director Hoover. (Hoover, in some instances, prepared the summaries himself.) [Sullivan Dep. at 72-74.] The summaries were directed, in letter form, to Dr. Kissinger and to President Nixon. [Sullivan Dep. at 42-43, 83-85; Sullivan Dep., Pl. Exb. 13; Haig Dep. at 41-45.]

22. Because leaks of classified information affecting our national security continued through 1969, 1970 and 1971, investigative effort by the Federal Bureau of Investigation continued throughout this period. [Def. Exb. 1, ¶10.]

23. The knowledge which Halperin had obtained through his employment in the National Security Council with respect to foreign affairs did not lose its significance when Halperin left his full-time position with the National Security Council staff in September 1969 and his consultant position in May 1970. [Def. Exb. 1, ¶11; Kissinger Res. at 27; Kissinger Dep. at 86; Nixon Dep. at 54, 116, 123.] Additionally, Halperin had taken, without authority, several boxes of official, classified documents from the Department of Defense and the National Security Council after he terminated employment, thereby retaining access to sensitive foreign affairs information. (Halperin Dep. at 64-68, 70, 84-85, 94-99.]

24. On February 10, 1971, the telephone surveillance on the Halperins' home telephone was terminated. [Haig Dep. at 118–119, Pl. Ex. 22; Mitchell Dep. at 68.]

Respectfully submitted,

RICHARD L. THORNBURGH
*Assistant Attorney General*

/s/ _____
ROBERT L. KEUCH
*Attorney, Department of Justice*

/s/ _____
GEORGE W. CALHOUN
*Attorney, Department of Justice*

/s/ _____
EDWARD S. CHRISTENBURY
*Attorney, Department of Justice*

/s/ _____
LARRY L. GREGG
*Attorney, Department of Justice*

/s/ _____
ELIZABETH GERE WHITAKER
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*202/739-5282*

# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187-73

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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## PLAINTIFFS' STATEMENT OF GENUINE ISSUES IN RESPONSE TO FEDERAL DEFENDANTS' STATEMENT OF MATERIAL FACTS*

1. Insofar as they are relevant and relate to the time period involved in this litigation the facts in this paragraph are not disputed.

2. This is an accurate summary of defendant Nixon's deposition testimony on this subject.

3. Plaintiffs do not dispute that Nixon and Kissinger believed in 1969 that secrecy was necessary. They note that Kissinger has since testified that:

> "First, when one is new in government, leaks take on an extraordinary significance, because one has a sort of a tendency to think that a top secret paper is inviolate, and when one suddenly sees the essence of it in the newspaper there is usually a rather strong reaction. I have talked to members of previous administrations who have described their similar reactions to me.
>
> One has to be candid. This is sometimes out of proportion to the intrinsic damage that this particular leak may do, looked at in the long view. But it tends to have an effect on confidence. (Dr. Kissinger's Role in Wiretapping Hearings, Senate Committee on Foreign Relations, 93rd Cong., 2nd Sess. 1974 (hereinafter Kissinger Wiretap Hearings) 323.)

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*Responses are keyed to paragraph numbers of Federal Defendants' Statement.

4. Plaintiffs' submit that a genuine issue exists with respect to these facts insofar as they are not consistent with the following:

A. Most members of the NSC staff including plaintiff Morton Halperin did not have access to the sensitive information related to the new initiatives described in paragraph 2. As regards secret Vietnam negotiations defendant Haig has testified to Halperin's lack of access.

B. Leaks occurred not only in the period 1969 to 1971 but both before and after. Of the leaks which occurred in the 1969 to 1971 period, as listed in Kissinger's Response to Interrogatory 9, only two stories, one relating to troop withdrawals from Vietnam and the other to the shoot-down of the EC 121, were from documents that were very closely held. Morton Halperin had no access to the troop withdrawal information. Halperin affidavit July 15, 1976.

C. Much of the information which leaked was in National Security Council documents but such documents are circulated widely in the Departments whose heads are on the NSC—State, Defense, Joint Chiefs, and CIA—and the same information was in most cases included in many Departmental documents. Halperin affidavits November 12, 1973 and July 15, 1976.

5. Plaintiffs concede that Nixon and Kissinger wanted to keep such information about their plans and intentions secret. Since the time in question, Kissinger has somewhat changed his view about the national security importance of maintaining secrecy. (See ¶ 3 *supra*). The fear of leaks was also related to the fact that senior adminsitration officials were often not informed of actions taken by Kissinger and Nixon and they feared that leaks would embarass them with these officials, including Secretary of State William Rogers:

> . . . re [another tapee] K[issinger] said wasn't really Cambodia, was domestic P[resident] th[in]ks there's more to this than appears. What really is situation of this guy. Closest confident.
>
> Why did he really leave?

Haig-K-I [Haldeman] meet tomorrow. Then to P Weds. [deleted] could expose Paris—Would destroy Admin. internally.

K has to work out way to tell Rogers re Paris so if this comes out say channels open if we ever want to use. Also have to disclose K's secret channel otherwise might embarass P [R?] and force him to resign vs. P.

[deleted] knows if he can bust K out he could cause great disruption.

Also figure [deleted] told Harriman & Harriman w[ou]ld break it.

Notes by Haldeman of conversation with Nixon 1/4/71.

6. Plaintiffs do not contest that there were discussions of leaks and how to stop them.

7. Plaintiffs do not dispute that the defendants so testified. There is, however, a genuine issue as to the accuracy of the testimony: Mr. Hoover is dead and there is no contemporaneous written record of his making the statement attributed to him. Nixon told Dean that wiretapping was always unproductive, which tends to reduce the credibility of his current statement that Hoover told him it was the most effective method. According to the Report of the Senate Select Committee on Intelligence, FBI records "reveal no case in which the source of any leak was discovered by means of electronic surveillance." Report S. 11, 94th Cong., 2d Sess. Tape of February 28, 1973 meeting between John Dean and Mr. Nixon. Exhibits to Federal Defendants Motion for Summary Judgment, Exhibit 13, at 103 (cited as Def. Ex. No. and page).

8. Plaintiffs submit that there is a genuine issue whether such an "opinion" was given, or if given, its scope. Neither the request to the Attorney General nor his response was in writing. Mr. Mitchell's affidavit suggests the mental formation of a conclusion, not the rendition of a formal legal opinion. The request was not based on a precise question as required by 5 U.S.C. §511, as interpreted by the Attorney General. In any event, the Attorney Gen-

eral's "opinion" and, indeed, the question of legality of wiretaps were apparently based on the assumption that existing FBI procedures would be followed, so the "opinion" was limited to the question of whether a warrant was required and did not address the question of what other procedures might be necessary to make the surveillance legal. Mitchell in a memorandum of May 6, 1969 to Hoover had laid out some of these procedures; they were not followed for this series of taps. Plaintiffs' Statement of Material Facts 18 (hereinafter Plaintiffs' Facts). Nixon Deposition at 26, 58, 59.

9. Plaintiffs incorporate by reference the discussion of this matter in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motions for Summary Judgment Against the Individual Defendants (hereinafter Plaintiffs' Memorandum) at 55–59 and submit that a genuine dispute exists insofar as defendants' statement is inconsistent with that discussion. In particular, they note that the Supreme Court in *Katz* clearly established by 1967 that the reasonableness standard of the Fourth Amendment—embodied in "other safeguards"—applied to all taps including those conducted on national security grounds. See Plaintiffs' Memorandum at 22.

10. Plaintiffs submit that a genuine dispute exists as to the facts stated here insofar as they are inconsistent with the following: Plaintiffs are not aware of any written internal FBI or Department of Justice document or public statements by the Attorney General discussing the legality of a warrantless surveillance directed at an American citizen not believed to be an agent of a foreign power for the ostensible purpose of tracking down the source of leaks, and were given no such document in response to Rule 34 requests that would have covered one had it existed. The speeches of the Attorney General included in Defendants' Exhibits describe the scope of warrantless national security surveillances to "combatting foreign-directed espionage and subvision" and meeting the threat of "domestic subversion" [Def. Ex. 11 at 72–73]. Section 2511(3) on which the Attorney General purports to have

relied does not encompass surveillances to discover the source of leaks. Furthermore plaintiffs submit that, as a factual matter, the executive branch precedents referred to are not relevant since most of the warrantless surveillances took place prior to the *Katz* decision [*Katz v. United States*, 389 U.S. 347 (1967)] and all of those conducted to track down leaks went on in 1965 or earlier and before the Supreme Court held in *Katz* that phone conversations were covered by the Fourth Amendment. Neither the Mitchell affidavit nor his speeches suggest that the Fourth Amendment standards other than the warrant were not applicable to all national security surveillances. In fact, the Attorney General stated the contrary: "It is not claimed that the President is exempt from the provisions of the Fourth Amendment, or that his discretion is unbridled." [Def. Exh. 11 at 79]. Def. Exhs. 11, 12, 13, 14.

11. Plaintiffs submit that a genuine issue exists as to these facts insofar as they are inconsistent with the following: In two of the seven cases cited by the defendants, the court held that since the wiretaps occurred prior to the Supreme Court decision in *Katz* the Fourth Amendment issue did not arise. These two cases involved no judgment of the Presidential power to conduct warrantless wiretaps which are covered by the Fourth Amendment. *United States v. Stone*, 305 F. Supp. 75 (D.D.C. 1969) and *United States v. O'Bragh*, 304 F. Supp. 767 (D.D.C. 1969). The other five cases involved surveillances conducted "solely for the purpose of gathering foreign intelligence" and were apparently directed at embasaries or similar facilities. None were directed at American citizens. In the one case involving a surveillance of an American citizen, the court held the surveillance illegal *United States v. Smith*, 321 F. Supp. 424 (C.D. Col. 1971). None of these decisions addressed the question of what procedures other than a warrant were constitutionally required, and all the taps in question presumably complied with applicable FBI regulations, as the Halperin tap did not. Plaintiffs also incorporate by reference Plaintiffs' Memorandum at 57–58.

12. Plaintiffs dispute these "facts", which are actually legal arguments. Plaintiffs' view of what the cases show

about constitutionality of these surveillances is discussed in ¶11 *supra*. As to the application of the standards of Title III, most of the cases do not discuss Title III standards at all *(Dillinger, Stone, O'Baugh, O'Neal)*. The others refer to section 2511(3) in various ways but none makes the sweeping holding described by defendants. Moreover none hold that procedures similar to Title III are not constitutionally required nor that the Title III sanctions procedures would not apply to illegal "national security surveillance".

13. Plaintiffs concede that these are the criteria described by defendants. They note that the third criterion is inapplicable to Halperin by definition and they dispute the contention that the other criteria was in fact used to select Morton Halperin to be tapped or that he fit them. See Plaintiffs' Memorandum of Points and Authorities in Opposition to Federal Defendants' Motion for Summary Judgment, §I(B)(1) (hereinafter "Pl. Opp. Mem."). Pl. Mem. 23–26.

14. Plaintiffs submit that a genuine dispute exists as to this statement. On May 9, 1969 Nixon instructed Kissinger to "inform Mr. Hoover of any names that he considered prime suspects." Nixon Deposition at 23, 35. They note that the statement is in the passive and does not indicate who gave the instructions or what Kissinger did in response.

15. Plaintiffs do not dispute this assertion, as to time of initiation, but note that no "security investigation" accompanied the Halperin tap. In addition, plaintiffs submit that a genuine issue exists as to the purpose of initiation and continuation of the tap. See Pl. Opp. Mem. §I(B).

16. Plaintiffs dispute this paragraph to the extent, that it is inconsistent with Plaintiffs' Facts ¶5–9. They note that the only contact between the White House and the FBI in the period May 9–12 in the record of this case was between Kissinger and Hoover at their level and Haig and Sullivan at theirs. Thus if the program was activated by the President on May 9 that directive must have been transmitted either by Kissinger or by Haig acting at his

direction. Nixon did not direct surveillance of any particular person and specifically did not direct the surveillance of Morton Halperin (Nixon Deposition at 34, 36).

17. Plaintiffs dispute the facts in this paragraph insofar as they are inconsistent with the facts stated in Plaintiffs' Facts Paras. 5–9. Kissinger selected Halperin for surveillance by directing Haig to bring his name to Sullivan. Halperin did not meet the criteria for surveillance since he had no information in his file which suggested a propensity to leak nor any adverse information which Kissinger considered significant, and since he had no greater access to information that leaked than many others on and off the NSC staff. See Pl. Opp. Mem. §I(B); Pl. Mem. 25.

18. Plaintiffs do not dispute this fact. They incorporate by reference the facts listed in Plaintiffs' Facts of ¶11–19. They note that the Attorney General did not authorize any surveillance until three days later.

19. Plaintiffs dispute these facts insofar as they purport to explain the motivation for departure from normal FBI procedures. It is their position that there is substantial evidence to support an inference that the departure from normal procedures was based on defendants awareness of the impropriety of their actions, as reflected in the fear that Hoover would blackmail Nixon. See Pl. Opp. Mem. §I(B)(3). The FBI was instructed to keep no records and limit FBI distribution but there was distribution of the letters in the White House, for example, to members of Ehrlichman and Haldeman's staff, a fact that undermining the "security" rationale. Plaintiffs' Facts ¶18–25, 62–65.

20. Plaintiffs dispute this fact. There was no FBI investigation. The FBI viewed itself as performing a service for the White House. It simply put on taps requested by Kissinger, continued them at his direction, and removed them at his direction. No distribution of the information occurred in the Bureau and normal files and records were not maintained. Distribution and use took place in the White House. *Ibid.*; Sullivan Deposition at 89; Jones Deposition at 32.

21. Plaintiffs dispute these facts insofar as they are inconsistent with the following. Sullivan instructed Wells to prepare summaries and to put his initials on them. Certain summaries were addressed to Mitchell as well as Nixon and Kissinger. After May 1970 letters were addressed to Haldeman. Plaintiffs' Facts 23. Sullivan Deposition at 73.

22. Plaintiffs dispute these facts as regards the plaintiff Morton Halperin. The FBI conducted no investigation at all after May 9 when it questioned some informants. The FBI simply conducted a wiretap at the request of the White House and supplied summaries. Nor can the continuation of the wiretap be related to continuing leaks. No defendant in his deposition offered this rationale. Kissinger, whose affidavit is cited for this assertion, claims to have had no role in deciding what surveillances were to be continued. This rationale cannot explain why the Halperin surveillance continued while others were removed. Moreover, most if not all of the material which leaked after Spetember 1969 was information as to which Halperin did not have access. Sullivan Deposition at 89. Jones Deposition at 32; Halperin affidavit July 16, 1976.

23. Plaintiffs concede that some of the knowledge that Halperin had did not loose its significance between September 1969 and February 1971 but contend that much of it did. For example, Halperin's knowledge of administration plans for Vietnam and SALT quickly became out of date. Halperin in any case did not provide anyone any classified information. Plaintiffs specifically dispute the facts in the second sentence of the paragraph. They dispute the relevance of the episode since none of the defendants appear to have been aware of it and it thus could not have served as a justification for the continuation of the surveillance. In any case Halperin did not ship or send any material without authority. His access to the material was dependent on his maintaining a security clearance. Halperin affidavit July 19, 1976; Halperin Dep. at 61, 64–68, 70, 72–76, 84–86.

24. Plaintiffs do not contest the date of termination. They incorporate by reference their Statement of Facts as

they relate to the period between when the surveillance ended and its revelation in May 1973. Plaintiffs Facts 52–72.

Respectfully submitted,

/s/ _____

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JULY 19, 1976

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1187–73

MORTON H. HALPERIN, ET AL., PLAINTIFF,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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## PLAINTIFFS' STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE I–19(h)

Plaintiffs, by their attorneys, hereby set forth, pursuant to Local Rule I–9(h), the following facts in support of their motion for summary judgment against the individual defendants as to which there is no genuine issue:

1. From May 9, 1969 until February 10, 1971 the FBI intercepted and monitored all of the telephone conversations on the home telephone of the plaintiffs. Federal Defendants Kissinger, Haig, Sullivan, and Kelley Answer to Second Amended Complaint (hereinafter "Fed. Def. Answer"), para. 24. Belter Deposition, p. 57.

2. No warrant was obtained to authorize this wiretap. Fed. Def. Answer, Para. 20.

3. Plaintiffs were not during this period nor at any time prior to or after this period agents of a foreign power, nor have they ever acted under the direction and control or in collaboration with a foreign power. Second Amended Complaint, para. 39; Fed. Def. Answer para. 39; Nixon Answer to Second Amended Complaint, para. 19; Mitchell Answer to Second Amended Complaint, para. 39; Haldeman Answers to Second Amended Complaint, para. 39.

4. At no time prior to or during the period of the surveillance did any of the defendants believe that the plaintiff Morton Halperin or the other plaintiffs were in fact agents of foreign powers. *Ibid.*; Memorandum Hoover to Mitchell, May 12, 1969.

5. On May 9 or 10, 1969, Kissinger asked defendant Haig to prepare a list of those who had access to the information in a New York Times story published on May 9, 1969, related to the bombing of Cambodia. Haig prepared such a list, which did not include the name of plaintiff Morton Halperin, and transmitted it to Kissinger. Haig Deposition, p. 143.

7. On May 9 or 10, 1969, Kissinger gave Haig the names of Morton Halperin, Helmut Sonnenfeldt and Daniel Davidson of his staff, and Robert Pursley, military assistant to the Secretary of Defense, and instructed him to bring those names to defendant William Sullivan and request a wiretap of each of them. Haig Deposition, p. 135; Memorandum Sullivan to DeLoach, May 11, 1969, Minority Memorandum on Facts and Law, House Judiciary Committee, 93rd Cong., 2nd, July 22, 1974, p. 62.

8. All three members of Kissinger's staff on the list Kissinger gave to Haig were described by Kissinger as individuals whom all of his associates had urged him not to hire. Kissinger Deposition, p. 36. Kissinger's Response to Interrogatories, Response 21.

9. On May 10, 1969, Haig brought the four names including that of Halperin to Sullivan and requested wiretaps. He instructed Sullivan that no records were to be maintained. Memorandum Sullivan to DeLoach, May 11, 1969.

10. During the meeting on May 10 Sullivan and Haig agreed on the procedures to be followed in the conduct of the wiretaps. Sullivan Deposition, p. 42; Haig Deposition, p. 23.

11. On May 11, 1969, Sullivan caused to be written a memorandum for Hoover (through DeLoach) describing Haig's conveyance of Kissinger's request for wiretaps on Halperin and three others, and attached a memorandum to be sent from Hoover to the Attorney General seeking his approval of the wiretaps. *Ibid.;* Memorandum Hoover to Mitchell, May 12, 1969.

12. On May 12, 1969, Hoover sent the memorandum to the Attorney General which Sullivan had caused to be drafted. The description of Morton Halperin in the memorandum read in full as follows:

> Halperin, aged 30, was detailed from the Department of Defense to the National Security Council as a senior staff member on January 21, 1969. He was the subject of an applicant-type investigation by this Bureau. While admittedly he has had contact with Soviet nationals the investigation did not disclose at that time any pertinent derogatory information. Memorandum Hoover to Mitchell, May 12, 1969.

13. On May 12, 1969, at 5:48 p.m. defendant John Mitchell signed the memorandum, thereby approving the surveillance of the Halperin home telephone. *Ibid.*; FBI Memo May 12, 1969.

14. On May 12, 1969, Sullivan instructed Special Agent Courtland Jones of the FBI Washington Office to install a wiretap on the home telephone of Morton Halperin at 8215 Stone Trail Drive, Bethesda, Maryland. *Ibid.*; Jones Deposition, p. 6.

15. Sullivan did not inform Jones of the purpose of the surveillance and did not tell him that it related to a possible leak. He gave Jones no instructions then or at any subsequent date to minimize the interceptions in any way. He instructed only that no records were to be kept in the Bureau relating to the interceptions. Jones Deposition, pp. 7, 14, 26.

16. On May 13, 1969, at 4:55 p.m. the first telephone conversation on the Halperin home telephone was monitored after the approval of the wiretap by the Attorney General. Previous interceptions had taken place from May 9, 1969 at 6:20 p.m. to May 11, 1969 at 9:24 p.m. Surveillance logs.

17. From May 13, 1969 to February 10, 1972, the wiretap was continuously in place on the Halperin home telephone. All calls were listened to and there was no effort to minimize the interceptions. Belter Deposition 38, 43, 57; Sullivan Deposition, p. 131.

18. The Halperin surveillance was not initiated or conducted under the normal procedure of the FBI and the Department of Justice in effect in and after May 1969 with respect to national security wiretaps including, at a minimum:

(a) a statement in the initial application to the Attorney General of

(i) the activities the subject was engaged in and the type of information which it was anticipated would be obtained through the wiretap;

(ii) the period of time for which approval was requested; and

(iii) whether it was reasonably anticipated that the conversations of any other person would be overheard.

(b) a limitation of the period of initial authorization to 90 days, and a continuous 90 day reauthorization requirement;

(c) a description in each 90 day application for renewal of the type of information which had been obtained from the wiretap;

(d) maintenance of complete FBI records pertaining to all aspects of the wiretap, including authorization, renewal and termination records, logs, summaries and records of dissemination;

(e) numbering and initialling of logs by FBI monitors;

(f) indexing of all FBI records pertaining to the wiretap into the appropriate FBI indexes, including the indexing of names of persons overheard on the tap in the FBI's Electronic Surveillance ("Elsur") Index;

(g) minimization of the interception and reporting of privileged communications, conservations of third parties and other conversations outside the original purpose of the wiretap;

(h) preservation for at least ten years of the tape records of intercepted conversations; and

(i) prohibition against the dissemination of records or other information pertaining to the wiretap to persons other than those involved in the authorization or conduct of the tap, and a requirement that informa-

tion originating from the tap be clearly identified as such prior to dissemination. Memorandum Mitchell to Hoover, May 6, 1969; Mitchell Deposition, p. 14; Belter Deposition, p. 63; Jones Deposition, p. 24.

19. Agents of the FBI prepared logs of some of the conversations, including many that were not pertinent to the subject of leaks, some of which were intended merely so that there would be an entry for the day. Belter Deposition, pp. 39, 40, 91; Haig Deposition, p. 38; Nixon Deposition, pp. 133-35; Haldeman Deposition, p. 56; Kissinger Deposition, p. 1.

20. The logs were forwarded to Sullivan who would read them, mark some portions and call Haig to come and read them. Sullivan Deposition, pp. 80, 252; Jones Deposition, p. 25.

21. Haig from time to time came to Sullivan's office and read the logs. Sullivan Deposition, p. 80; Letter Sullivan to Hoover, May 20, 1969.

22. On at least one occasion (May 20, 1969), Kissinger came to Sullivan's office and read some logs. Letter Sullivan to Hoover, May 20, 1969.

23. Beginning on or about May 26, 1969, Sullivan on instructions from Hoover caused to have written letters summarizing some of the information obtained from the wiretap. When the letters were prepared (addressed to Kissinger and Nixon from Hoover) Sullivan would forward them to Hoover with the recommendation that Hoover sign them and send them to the White House. Memorandum Sullivan to DeLoach May 28, 1969 and various dates thereafter.

24. After Hoover signed the letters, they were sent to the White House and delivered to Haig or his secretary who would hold them unopened for him. Such letters were sent on the following dates: May 28, 1969, August 1, 1969, August 13, 1969, August 22, 1969, Sept. 3, 1969, Sept. 30, 1969, Oct. 9, 1969, Oct. 24, 1969, Nov. 7, 1969, Dec. 29, 1969, Dec. 31, 1969, May 4, 1970, May 8, 1970, and May 11, 1970. Haig Deposition, p. 43. Letters Hoover to Nixon and Kissinger on dates indicated.

25. Haig would open the copy of the letter addressed to Kissinger, read it and then send it on to Kissinger. Haig Deposition, p. 43.

26. Kissinger would read some but perhaps not all of the letters and return them to Haig. Haig Deposition, pp. 43-45.

27. Haig would forward the copy addressed to Nixon to defendant Ehrlichman's office. Haig Deposition, p. 57.

28. The letters would be opened by Ehrlichman's secretary, read by his assistant Todd Hullin and then sent to Egil Krogh of his staff according to instructions Ehrlichman had given for the distribution of letters from FBI Director Hoover. At least some of the letters including those of September 3 and 1969, Nov. 7, 1969, and May 8, 1970, and May 11, 1970 were either filed in Ehrlichman's office or copies were made and filed in his office. Ehrlichman Deposition, pp. 7-8, Hullin Deposition, pp. 5, 7. Letter R. Stan Mortenson to Walter Slocombe, June 28, 1976.

29. Defendants Haig, Haldeman, Ehrlichman, Kissinger and Nixon would from time to time discuss the contents of conversations intercepted from the Halperin phone and the utility of the surveillance and whether it should be continued. Haig Deposition, p. 43; Haldeman Deposition, p. 43, 55; Nixon Deposition, p. 135; Memorandum Haig to Kissinger, June 4, 1969.

30. From time to time Sullivan caused to be prepared summaries of the interceptions which were then sent to Mitchell. Such summaries were sent on at least the following dates: August 6, 1969; December 29, 1969 and May 4, 1970.

31. In December 1969 Morton Halperin was in telephone contact with Leslie Gelb with whom he was working in assisting former Secretary of Defense Clark Clifford who was writing an article relating to American policy in Vietnan. Halperin discussed with Gelb an outline of points Clifford might make in such an article, and steps Clifford might take to insure a broad audience for his views. Upon

learning of the interceptioon of this conversation, defendant Sullivan transmitted information about the conversation to Kissinger, Mitchell and Nixon, through J. Edgar Hoover. This information was subsequently further transmitted by Haig to Ehrlichman who transmitted it to Haldeman who transmitted it to Jeb Stuart Magruder, who in turn transmitted it to Alexander Butterfield, then a deputy assistant to the President, early in January, 1970. At Ehrlichman's suggestion, Haldeman instructed Magruder, than a special assistant to the President, to use the information to work on planning answers to the criticisms of the Administration's Vietnam policy which the intercepted conversations revealed would be made in the Clifford article. In various communications to White House staff members in January, 1970, defendants Haldeman and Ehrlichman suggested ways in which to answer the article once it appeared and to attempt to discredit its author. Letter from Hoover to Nixon, December 29, 1969; Memorandum from "E" to "H"; Memorandum from "H" to "M"; Memorandum from Butterfield to Magruder, January 8, 1970; Memorandum from Keogh to Magruder, January 12, 1970; Memorandum from Magruder to Haldeman and Ehrlichman, January 15, 1970.

32. In a note Ehrlichman characterized as follows the information derived from the interceptions" "This is the kind of early warning we need more—your game planners are now in an excellent position to map anticipatory action." After reading Ehrlichman's note, Haldeman wrote: "I agree with John's point. Let's get going." Handwritten memorandum from "E" [Ehrlichman] to "H" [Haldeman], undated; Memorandum from "H" [Haldeman] to "M" [Magruder].

33. On or about May 12, 1970 there was prepared within the FBI from the logs under the control and supervision of Sullivan a memorandum entitled, "Sensitive Technical Coverage at Request of the White House." The memorandum summarized a number of conversations overheard on the wiretap of plaintiffs' home telephone and included logs of those conversations. The memorandum prepared for

Hoover noted that "since the President's announcement on April 30, 1970 of the invasion of Cambodia, we have received considerable information from these installations," including the one on plaintiffs' phone. The memorandum summarized the information from the wiretap on plaintiff's phone as follows:

> We learned through these sources that Halperin, who was serving as a consultant to the National Security Council, planned to resign to protest the invasion of Cambodia. He subsequently did resign. During conversations with other individuals Halperin indicated that he feels the President intends to attack North Vietnam and Laos and agreed to work with Senator Fullbright (D-Arkansas) in opposing the war. Halperin also stated he had contacted Kuntsler, who may be identical with William Kuntsler, the attorney for the individuals recently convicted for violation of the antiriot laws at Chicago, Illinois. Kuntsler allegedly is willing to join an "organization" being formed by Halperin and other individuals.

FBI Memo May 12, 1970.

34. On May 12, 1970 Nixon, Hoover and Haldeman met to discuss the wiretap program. Hoover supplied the information from his brief. Nixon instructed Hoover thenceforth to direct his summary letters reporting on the wiretap interceptions only to Haldeman. Haldeman was instructed by the President to screen the letters and pass pertinent ones on to him and to Haig for Kissinger. *Ibid.*, Memorandum DeLoach to Sullivan May 13, 1970; Memo Haynes to Sullivan, May 15, 1970; Haldeman Deposition, p. 49.

35. From May 12, 1970 until February 10, 1971 the following letters summarizing interceptions of plaintiffs' phone were delivered to Haldeman's office. May 14, 1970, May 18, 1970, May 21, 1970, May 26, 1970, May 29, 1970, June 2, 1970, June 9, 1970, June 11, 1970, June 15, 1970, June 19, 1970, June 23, 1970, Oct. 14, 1970, Nov. 13, 1970, May 24, 1970, Dec. 17, 1970, Dec. 10, 1970. Letters Hoover to Haldeman, dates indicated.

36. The letters sent to Haldeman contained a substantial amount of information related to the lawful political activity of the plaintiffs. As reported in the letters these included:

> Morton H. Halperin, a former member of the White House staff who is now employed by the Brookings Institution and who recently resigned as a consultant to the National Security Council as a protest against the war in Cambodia, told his wife that he was disappointed that so few people have congratulated him on his resignation as a consultant. He said that on next Monday he was going to Cambridge, Massachusetts, to discuss his forthcoming book with some professions. He also said that he had signed a petition against the war. He subsequently stated that he had signed a letter to "The New York Times" from "Military Strategist." He said it was incredible that "they" could only get five individuals to sign the letter. He mentioned that Senator Tydings had jointed his "group." Letter Hoover to Haldeman May 14, 1970.

> Morton H. Halperin, a former member of the White House staff who recently resigned as consultant to the National Security Council as a protest against the invasion of Cambodia stated in reply to a question concerning his antiwar activities "its just a group of concerned citizens" who are being financed by the Council for a Livable World. He said that the group included Dan Ellsburg (phonetic) of Rand Corporation; an individual at Cornell University who has the Southeast Asian program; an individual from Michigan State University; and an individual from Brookings Institution. He said that he had attempted to set up a national organization but it was hopeless. He told the individual to whom he was speaking to watch the newspaper for a real blast on the war by former Secretary of Defense.

> Halperin mentioned that he had received a copy of Senator Edmund Muskie's resolution on the war and that Muskie had read the resolution to Clifford, probably in reference to Clark Clifford, former Secretary of Defense.

Halperin was subsequently in contact with Mike Brewer (phonetic) of the Ripon Society. Brewer asked Halperin's assistance in lobbying for antiwar resolutions which will be introduced in Congress. He wanted Halperin to talk to the "middle group" of congressmen who are not committed. Brewer told Halperin he planned to talk to the Executive Director of the Producers Council, which includes representatives of basic industries, such as U.S. Steel, to get their support for the resolutions. Halperin agreed to help and told Brewer to "try to push this Clifford article when it comes out." Letter *Ibid.* May 18, 1970.

Morton H. Halperin, a former member of the White House staff who recently resigned as a consultant to the National Security Council as a protest over the invasion of Cambodia, was in contact with Jim Johnson (phonetic). Johnson stated that he was one of the directors of the lobbying effort for the "McGovern-Hatfield thing what we call operation 'purse strings.'" Halperin agreed to meet with Johnson. Letter *Ibid.* May 26, 1970.

Morton H. Halperin, an employee of the Brookings Institution who recently resigned as consultant to the National Security Council, during a conversation stated that Mathias, probably identical to Senator Charles McC. Mathias, had talked to Mansfield, probably identical to Senator Mike Mansfield, concerning a meeting. Halperin said "we are now talking about the weekend of the 19th and 20th." Subsequently, Halperin sent the first half of an article to Dr. Leslie Gelb of the Brookings Institution. Gelb described it as "the Muskie thing." Gelb stated that he and Halperin will meet with Muskie, probably identical to Senator Edmund S. Muskie, on Wednesday, June 3, 1970. Letter *Ibid.* June 2, 1970.

Morton H. Halperin indicated that Senator Frank Church was attempting to contact him. He also stated that he had recently been in Cambridge, Massachusetts, where he had talked with other individuals about the war in Vietnam. Halperin and these individuals are to have another meeting at an unindicated date. Halperin was also to attend the meeting

called by an official of the Ripon Society. Letter *Ibid.* June 9, 1970.

Morton H. Halperin, who recently resigned from the National Security council, recently contacted the Urban Coalition and dictated a paragraph which he said Mr. Gardner had requested. Gardner is probably identical with John Gardner, the former Secretary of the Department of Health, Education and Welfare, who now heads the Urban Coalition. Halperin dictated the following paragraph to Mr. Gardner's secretary. "Withdrawal of all American forces from Vietnam within eighteen months. Negotiation of an agreement with the Soviet Union ending the nuclear arms race. Reduction of defense spending. Increased foreign aid and continued U.S. involvement in the world consistent with real American interest and domestic needs." Letter *Ibid.* June 11, 1970.

Morton H. Halperin, who recently resigned from the National Security Council as a protest against the invasion of Cambodia, was contacted by Howard Gilette (phonetic). who is apparently connected with Project Purse Strings, a group formed to support "peace" candidates in forthcoming elections. Halperin, at Gilette's request, agreed to talk to the "top people" in the offices of Senators Norris Cotton and James B. Pearson on the war in Cambodia. Gilette described Senator Cotton as "marginal" on the Church-Cooper amendment but said that Halperin's talk could make Senator Pearson favor the amendment. Letter *Ibid.* June 23, 1970.

Halperin was in contact with Gelb concerning the President's peace proposals. Halperin said that under these proposals the United States can give unlimited support to the Cambodians, the South Vietnamese and the Laotians. In answer to a question by Gelb, Halperin said he was writing a paper on the President's speech which he intended to give Max Frankel of "The New York Times" to use as he desired. He also said that he was writing a newspaper article on Vietnam. Letter *Ibid.* Oct. 14, 1970.

Morton Halperin, a former member of the National Security Council staff, was in contact with Leslie

Gelb. Both Halperin and Gelb are employed at the Brookings Institution, Washington, D.C. Gelb stated he thinks United States Senator Kennedy will run for President in 1972. He cited as his reasons the fact that Kennedy's acceptance speech was addressed to a larger audience than the people of Massachusetts, that Kennedy was not ready to discuss NATO and that relatives and friends of Kennedy have said Kennedy was only waiting on the Massachusetts vote before making his decision. Gelb added that unless United States Senator Muskie did not run against Kennedy, President Nixon will win in 1972. Halperin did not agree with this last statement. Gelb also mentioned he had met with Muskie prior to Muskie's recent appearance on television. Others in attendance or commitment were McPhearson, Fernnard, Valenti, Burnke, Cohen and Sahire. All of the above names are phonetic.

Halperin and Gelb also discussed a meeting which may take place this week to advise Senator Muskie concerning "China policy." They discussed the fact that Nichols, Warnke, Barnett, Halperin, Tony Lake, Reed Perkins and Owenberg may participate in the meeting. Lake is probably identical with William Anthony Lake, a former member of the National Security Council staff. Letter *Ibid.* Nov. 13, 1970.

Halperin was subsequently in contact with Leslie Gelb of the Brookings Institution. Gelb discussed a forthcoming trip by Senator Edmund Muskie to Russia and said Muskie was making the trip recommended by Clifford, probably referring to former Secretary of Defense. He also mentioned that Averell Harriman was going with Muskie. Letter *Ibid.* Dec. 17, 1970.

Morton Halperin, a former member of the National Security Council, was in contact with Leslie Gelb of the Brookings Institution. Gelb told Halperin that Senator Edmund Muskie was to hold a meeting at 5 p.m., December 30, 1970, in Clifford's office concerning Secretary of Defense Clark Clifford. Letter *Ibid.* Dec. 30, 1970.

Morton Halperin, a former employee of the National Security Council staff who is now connected with the Brookings Institution, was contacted by Lowell Beck of Common Cause which is led by John Gardner. Beck said Gardner was interested in getting Halperin's thought on the Cambodian situation which Halperin agreed to furnish. Halperin said the Administration has geared itself to save Cambodia and may have to save Laos. He said the real issue is "what can you try to get Congress to do." Beck and Halperin agreed to focus on a resolution that Congress will buy.

Beck said Gardner is giving a speech before the Ripon Society in New York on February 1, 1971. Both Beck and Halperin agreed the speech should "give a hint we are starting to move on the Cambodian question." Letter *Ibid.* Jan. 29, 1971.

37. Throughout the period of the wiretap defendants Kissinger, Haig, Halderman, Nixon and Sullivan were aware of the fact that no information was being obtained relative to leaks and that much information that was not pertinent was being gathered. Sullivan recommended removal of the wiretap but did not order his subordinates who were conducting the surveillance and who were responsive to his orders to discontinue it. The other defendants either took no action or ordered the surveillance continued. Haig Deposition, pp. 38, 50, 66; Haldeman Deposition, pp. 43, 56; Kissinger Deposition, pp. 73, 74, 76, 88, 97; Nixon Deposition, pp. 133, 135.

38. On May 15, 1969 Sullivan informed DeLoach that no information related to leaks to the *New York Times* or elsewhere had been discovered. Memorandum Sullivan to DeLoach, May 15, 1969.

39. In the same memorandum Sullivan informed DeLoach that he would notify the Director immediately if the source of a leak was ever discovered. No such notice concerning the Halperin wiretap was ever sent. *Ibid.*

40. On May 20, 1969 Kissinger visited Sullivan's office and told him that he wanted the surveillance on Halperin

continued "for a while longer." Letter Sullivan to Hoover, May 20, 1969.

41. On June 4, 1969 Haig prepared "talking points" for Kissinger for a meeting Kissinger was to have with Hoover. They read in pertinent part as follows:

> 1. Express your appreciation to Mr. Hoover and Mr. Sullivan for their outstanding support in recent weeks in uncovering security problems within the NSC staff. Inform Mr. Hoover that you have discussed these problems in detail with the President (and with Messrs. Haldeman and Ehrlichman).
>
> 3. Ask Mr. Hoover for his views on how we should proceed with Halperin, who has been involved in indiscretions and who obviously has a reputation for liberal views but who has yet to be firmly linked with a security breech. I think it best that you seek Mr. Hoover's advice in this instance while avoiding any specific comments pro or con and especially avoiding any opinions on this matter.
>
> 5. Ask Mr. Hoover if he has any additional information or guidance which he feels would be useful in this very difficult situation. Specifically you might inquire about requirements for prolonging the taps, making it clear that the President wishes to terminate them as soon as possible. (I think in the case of Halperin and that they should be kept on for at least another two weeks so that a pattern of innocence can be firmly established.) Memorandum Haig to Kissinger, June 4, 1969.

42. On June 4, 1969 Kissinger met with Hoover and talked to him along the lines of the talking points prepared by Haig. *Ibid.* Kissinger Deposition, p. 71.

43. On June 20, 1969 Sullivan wrote to DeLoach that "there has been nothing of late relevant to the leaks" and that Haig had agreed to discontinue some of the surveillances, but not the wiretap on Halperin. Memorandum Sullivan to DeLoach, June 20, 1969.

44. On July 8, 1969 Sullivan wrote to Hoover that "nothing has come to light of significance from the standpoint of the leak in question" and suggested that

"some of this coverage" be removed. He stated his "guess" that Halperin assumes his phone is tapped. Letter Sullivan to Hoover July 3, 1969.

43. On September 15, 1969, Kissinger told Haig to instruct the FBI to discontinue all of the surveillances except those on Halperin and one other. This was done, Memorandum Sullivan to DeLoach, Sept. 15, 1969.

46. On September 19, 1969 Halperin left the NSC staff over the objections of Haig and Kissinger who urged him to remain and not because of anything overheard on the wiretap of his phone. Kissinger offered to resume Halperin's full access to sensitive information if he stayed and asked him to become a consultant if he left. Kisinger Deposition, p. 59; Kissinger Answer to Interrogatories, p. 59; Haig Deposition, p. 66.

47. There is no evidence in the record that there was any review of the legality, necessity or propriety of continuing the surveillance at this time.

43. From September 19, 1969 to May 8, 1970 Halperin served as a consultant on the NSC staff. He worked only one day and had no access to classified information. Halperin affidavit, Nov. 12, 1973, para. 7, 8.

49. On May 4, 1970 Halperin resigned as a consultant to the NSC. *Ibid.*, para. 6.

50. There is no evidence to indicate that any review was made of the propriety, legality or necessity for continuing the surveillance at this time.

51. On July 12, 1970 Jones sent a note to Sullivan noting that the Halperin tap had not produced anything "of value" suggesting its removal. Memorandum Jones to Sullivan July 12, 1970.

52. On February 10, 1971 Sullivan received Hoover's permission to inquire of Haig if any of the surveillances could be discontinued. Memorandum Sullivan to Tolson, Feb. 10, 1971.

53. On February 10, 1971 Sullivan inquired of Haig who requested the removal of all the surveillances. Memorandum Hoover to Mitchell, Feb. 11, 1971.

54. On February 10, 1971 Sullivan ordered the removal of the Halperin wiretap and so informed the Attorney General through Hoover. *Ibid.*

55. On February 10, 1971, the wiretap was removed. *Ibid.*

56. On June 15, 1971 a blind memorandum was prepared, evidently in the FBI and in connection with the investigation concerning publication of the Pentagon Papers, reporting conversations from the Halperin wiretap. FBI Memorandum, June 15, 1971.

57. During the course of their work, the White House "plumbers" were given access to the files of the Halperin wiretap and at least one letter reporting a conversation from the wiretap was put in the plumber's files. Ehrlichman Deposition, p. 79.

58. On June 17, 1971, Kissinger drew upon information he had learned from the Halperin wiretap in a discussion concerning Daniel Ellsberg at a White House meeting. Ehrlichman Deposition, pp. 67–69. Ehrlichman handwritten notes of June 17, 1971 meeting.

59. On July 2, 1971, the Justice Department asked the FBI if Daniel Ellsberg had been overheard on any electronic surveillance. Despite the fact that Ellsberg had been overheard at least 11 times on the Halperin wiretap, the FBI informed the Justice Department on July 13 that Ellsberg had never been overheard. Memorandum Mardian to Hoover July 2, 1971; Memorandum Hoover to Mardian July 13, 1971. Surveillance logs and letters.

60. On July 9, 1971, the Justice Department asked the FBI if Morton Halperin had ever been the subject of an electronic surveillance. Memorandum FBI to Justice July 16, 1971.

61. On July 16, 1971, the FBI informed the Justice Department that Halperin had never been the subject of a surveillance. Sullivan approved the sending of this memorandum. *Ibid.*

62. In June 1971 Sullivan, who then had custody of the documents pertaining to the Halperin wiretap, contacted

defendant Mardian and informed him that he did not believe the wiretap documents could safely be left in the FBI after his departure. Mardian then consulted Mtichell about the disposition of the documents, and was thereafter summoned to San Clemente to discuss the matter with Nixon and Ehrlichman. Fed. Def. Ans. to Second Amended Complaint, D. 30. Sullivan Deposition, pp. 173–89; Nixon Dep. 143–49; Ehrlichman Dep. 40–45; Mitchell Dep. 73–76; Mardian FBI interview (Form 302).

58. On July 10, 1971, two days prior to Mardian's arrival, Nixon and Ehrlichman discussed the ongoing investigation of the publication of the Pentagon Papers, during the course of which Ehrlichman made the following note: "Re Grand Jury—Don't worry re taps on discovery—re WITS". Daniel Ellsberg, who had been overheard approximately fifteen times on the Halperin wiretap was the prime subject of the Pentagon Papers investigation and Halperin's name had been mentioned as possibly involved. Ehrlichman Dep. 69–73; Ehrlichman notes dated 7/10/71; Nixon Dep. 140–43; Haldeman Dep. 83–84; Blind Memorandum "Re: Morton Halperin 6/15/71"; Memorandum Mardian to FBI Director July 2, 1971.

64. On July 12, 1971, Mardian met with Nixon and Ehrlichman and discussed both the disposition of the wiretap documents and the progress of the Pentagon Papers investigation. At this meeting Mardian stated, according to Nixon, that the tap program could become a "hot issue" and informed Nixon and Ehrlichman that the documents were not properly filed in the FBI and that Sullivan believed they could not safely remain there after he left. Nixon then instructed Mardian to obtain the documents from Sullivan. Ehrlichman's notes of this meeting state: "P[resident]—OK obtain and destroy all logs". With respect to the summary letters sent to the White House, Ehrlichman's notes state: "Haig return docs to FBI then to RM for destruction. Haig request the FBI (Sullivan) to destroy all special coverage. Sullivan will contact Mardian". Nixon Dep. 144–49; Ehrlichman Dep.

73–75; Mardian FBI interview (Form 302) Ehrlichman notes (7/12/71).

65. Some time after the July 12 meeting at San Clemente Nixon instructed Ehrlichman to take possession of the documents from Mardian and to place them in a safe in Ehrlichman's White House Office. These instructions were carried out and the documents remained in Ehrlichman's safe for the next 21 months. Nixon Dep. 148–49; Ehrlichman Dep. 45–56; Fed. Def. Ans. to Second Amended Complaint ¶30; Mardian FBI interview (Form 302).

66. In July 1971 the FBI incorrectly informed the Justice Department that there had been no wiretap of Morton Halperin. Memorandum Director FBI to Assistant Attorney General, Internal Security Division, July 16, 1971.

67. After indictment of Daniel Ellsberg in June 1971, Ellsberg and his counsel were repeatedly told in response to wiretap discovery requests that Ellsberg had not been overheard on any FBI wiretap. In May 1973, the trial judge in *United States v. Ellsberg and Russo*, No. 9373 (W.M.B.)—(C.D. Cal.), was informed that Halperin and Ellsberg had in fact been overheard but that the records of the tap were missing from the FBI. Although Nixon, Ehrlichman and Mardian knew that the records were secreted in Ehrlichman's safe, they withheld this information from the FBI, the Justice Department, and the trial judge in the Ellsberg case, who dismissed the prosecution when the government failed to produce the records. Memorandum Mardian to FBI Director, July 2, 1971; Memorandum FBI Director to Assistant Attorney General, July 13, 1971; Ehrlichman Dep. 52–56, 84–85; Nixon Dep. 153–62; Mardian FBI Interview (Form 302).

68. In February 1973, *Time* Magazine informed the White House and the Justice Department that it had been advised of a program to conduct electronic surveillance of White House officials and newsmen. On the instructions of the President, both the White House and the Justice Department falsely denied the story. Nixon Dep. 149–52.

69. On February 28, 1973, Nixon and John Dean had a conversation in which Nixon was informed by Dean of the "stonewalling," *i.e.*, false denial, of the *Time* story and answered, "Oh absolutely." The tape of the meeting reveals that Nixon was then aware that Halperin had been under surveillance and that the Halperin tap had revealed nothing useful. Tape of February 28, 1970 meeting between John Dean and the President.

70. In March 1973, at the confirmation hearings of L. Patrick Gray to be Director of the FBI, Gray was asked whether the FBI had conducted the wiretap described in the *Time* story, and answered that the FBI did not have records reflecting the existence of such a tap. Nixon, who knew that the FBI records were incomplete because of his orders to hide the records in the White House, did not intervene to order Gray or any other official to advise the Committee of the facts. Nixon Dep. 152–55.

71. The existence of the wiretap program first became known to the plaintiffs on May 10, 1973, when the trial judge in the Ellsberg case ordered the release of a memorandum filed with the court on May 9, 1973, by William D. Ruckelshaus, Acting Director of the Federal Bureau of Investigation. The memorandum stated in pertinent part:

> A preliminary report which I received last night indicates that an F.B.I. employee recalls that in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from the electronic surveillance of Dr. Morton Halperin's residence. It is this employee's recollection that the surveillance was of Dr. Halperin, and that Mr. Ellsberg was then a guest of Dr. Halperin.
>
> I have no information concerning the substance of the conversation, nor has the investigation to date been able to find any record of such a conversation. The investigation, of course, is not complete, and further facts bearing upon the wiretaps may be uncovered. Ruckelshaus Deposition at p. 6.

27. On or about May 11, 1973, Ruckelshaus recovered the Halperin wiretap records from Ehrlichman's safe and

returned them to the FBI. (Ruckelshaus Deposition, pp. 63–64.)

Respectfully submitted,

/s/ _____

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 1187–73

MORTON H. HALPERIN, ET AL., PLAINTIFF

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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## FEDERAL DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

Federal defendants, by their attorneys, hereby set forth, pursuant to Local Rule 1–9(h), the following response to Plaintiffs' Statement of Material Facts:

1. Federal defendants do not disagree with the facts contained in plaintiffs' Facts 1, 2, 3, 4, (plaintiffs have no Fact numbered 6), 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 41, 42, 44, 46, 47, 50, 52, 53, 54, 55, 56, 59, 60, 61, 62, 58 (sic), 64, 65, 66 and 27 (sic).

2. Federal defendants dispute the accuracy of the "facts" contained in 5, 7, 17, 22, 36, 37, 40, 43, 45, 48, 51, 57, 58, 67, 68, 69, 70 and 71. Federal defendants submit the documents and materials upon which plaintiffs purport to rely and the entire record in this matter speak for themselves.

3. However, while Federal defendants do not disagree with the plaintiffs' "facts", except as specifically enumerated in paragraph 2, *supra*, they do disagree with the characterizations which plaintiffs' have sought to give those facts.

4. Further, Federal defendants disagree with plaintiffs' assertion that all of the "facts" which they enumerate are material to the resolution of this action by summary judgment.

5. Finally, Federal defendants rely on their Statement of Material Facts as inclusive of all facts necessary for the Court to resolve this action. *See* Federal defendants' Statement of Material Facts, filed July 9, 1976.

6. Notwithstanding the foregoing, the remaining facts contained in plaintiffs' Statement constitute an adequate basis for this Court to reach and decide the pending Cross-Motions for Summary Judgment, pursuant to Rule 56, F.R. Civ. Pro.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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---

## AFFIDAVIT OF MORTON H. HALPERIN

1. I am a plaintiff in the above-captioned litigation. This affidavit is submitted in connection with Plaintiff's Response to Federal Defendants' Motion for Summary Judgments.

2. I have reviewed all of the summary letters of telephone conversations provided to the plaintiffs. None of the letters in my judgment contains any information which was classified at the time of the conversation.

3. The letters do contain a great deal of discussion about foreign policy since that was the field in which I was working and writing at the time but none of the information discussed was classified.

4. After I left the National Security Council staff in September 1969, I felt free to speculate on the motives and views of the North Vietnamese government as well as those of senior U.S. government officials. Such speculation was not based on access to current government information and did not involve the circulation of classified information.

6. After leaving the government I met frequently with American and foreign journalists. Often journalists would call and say that Dr. Kissinger or a member of his staff had suggested that they talk to me about the NSC staff and how it worked. In other cases the journalists wanted

to discuss the substance of foreign policy issues, and I would do so to the extent that I could without revealing classified information. In no conversation with journalists did I reveal such information.

7. Leaks of classified information occurred both prior to May 1969 and after February 1971.

8. With the exception of the stories related to troop withdrawals from Vietnam and the EC-121 shootdown, none of the leaks described by Kissinger in his Response to Interrogatory 9 appear to involve material related to major Presidential initiatives which were being very tightly held.

9. National Security Council documents were circulated widely within the Department of State and Defense and in the CIA.

10. Leaks which occurred after September 1969 as identified in Kissinger's affidavit (Def. Ex. 1) involved material to which I did not have access.

11. Much of the information relating to the NSC which I learned from January to September, 1969, was greatly reduced in value after the end of 1969 because it was out of date.

/s/ _____
MORTON H. HALPERIN

Sworn and subscribed to before me this ___ day of July, 1976

/s/_____
*Notary Public*
*District of Columbia*

## EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HENRY A. KISSINGER, ET AL., DEFENDANTS.

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### MEMORANDUM ON HALPERIN SECURITY FILE INFORMATION AND RESULTS OF THE TAP

The only two items in any of Halperin's security files that can in any way be said to be adverse are contained in his Department of Defense file and are reported in memoranda of July 10 and August 1, 1968 (attached as Exhibits A and B to this memorandum).[1]

One of the items concerned the omission from a security form submitted on August 17, 1966, of travel to Greece, Yugoslavia and the U.S.S.R., as part of a round-the-world trip lasting from September 1963 to September 1964.[2] As Halperin explained to the security officers of the FBI and Department of Defense who questioned him about this matter, the countries had been omitted inadvertently by his secretary in typing the security form. The form itself provided only a very small space to list the countries visited and others were to be listed on a continuation sheet.

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[1] Memorandum for the record subject: HALPERIN, MORTON H. by William H. Quinlan, Jr., July 10, 1968; Memorandum for file subject: Halperin, Morton H. by John S. Rice, Jr., August 1, 1968. In his response to Interrogatory 18 Kissinger identifies these two items as the only ones that "might be regarded as unfavorable."

[2] Personnel Security Form dated August 17, 1966. See items 12 and its continuation in item 20.

In moving from the form to the continuation sheet, the secretary inadvertently skipped 4 countries in typing a long list.[1] This is shown in Exhibit C.

Halperin had made no effort to conceal this trip having listed the countries on his passport application and on other security clearance forms and having volunteered the information to the FBI in June of 1968.[2] This information was in Halperin's FBI file.[3] When in August of 1968 Halperin explained the omission to the Department of Defense security officials, they asked Halperin to prepare a new personnel history which he did.[4] Halperin's Department of Defense file does not show that any further action was taken on this matter.

The other item listed in Halperin's Defense Department security file relates to a Department of Defense requirement that all contacts with Soviet nationals be reported. There is no suggestion that Halperin did not adhere scrupulously to this rule. Halperin filed a memorandum on November 8, 1967 reporting his contacts with two Soviet officials on the previous day; on January 3, 1968 he filed a memorandum reporting a lunch on December 29, 1967 (Exhibits D and E). When visited by DOD security officers in July of 1968 and shown pictures of various Russian officials, Halperin informed the security officers that his memorandum of January 3, 1968 had identified the wrong Russian as the person with whom he had lunch. Halperin provided the correct name in the interview. He did not

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[1] Memorandum for file August 1, 1968. Halperin Deposition at 22-25. FBI memorandum of June 18 [year deleted but apparently 1968] reporting FBI interview with Morton H. Halperin on June 20.

[2] *Ibid.*; Memorandum subject Halperin, Morton H. by Jay F. Myers, July 18, 1968.

[3] FBI memorandum February 20, 1969 re Morton H. Halperin.

[4] Personnel Security Form dated August 13, 1968.

subsequently submit a written memorandum correcting the error.[1]

It is this failure to correct the written record on the correct identity of the Russian that led a DOD Security officer to note that Halperin "appears to have a carefree attitude concerning his obligations under AI-64 in that he did not advise the Security Division of his error in identification of who he had lunch with on 29 December 1967".[2]

As the federal defendants note in their brief "where access to such highly sensitive information is involved, doubts are resolved in the form of the Government."[3] In this case there were evidently no doubts since Halperin's Top Security Clearance was continued in effect and he was granted a series of additional clearances of great sensitivity including, on August 29, 1968, one month after his interview with DOD security officers, a "SIOP-E SI" clearance for access to the nation's most secret plans for strategic nuclear war,[4] and a clearance which can be described on an unclassified basis only as one relating to

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[1] Memorandum July 10, 1968.

[2] The Defendants' Memorandum uses this quotation in a way which appears to suggest that the judgment regarding a "carefree attitude" was that of the NSC security officer in 1969 and that it related to "the reporting of security information." Fed. Def. Memo. at 10. As we show below, Mr. Ash reached no such conclusion.

[3] Fed. Def. Mem. at 39. The memorandum cites *Clifford v. Shoultz*, 413 F.2d 868 (9th Cir. 1969). There an individual with a clearance declined to answer questions about problems raised in a security investigation. The court sustained the government's right to take away his clearance. In the Halperin case Dr. Halperin answered all the questions asked, evidently to the satisfaction of the security officers since not only was his clearance not lifted, but as discussed *infra*, he was granted additional and highly sensitive clearances.

[4] DOD SIOP-ESI Access Certificate signed by Morton H. Halperin September 18, 1968 and noting access approved August 29, 1968. Exhibit F.

"military space programs." These clearances remained in effect until Halperin resigned in September 1969.[1]

In January of 1969 when Halperin went to work on the NSC staff, the Security Officer of the NSC Russell Ash requested a copy of Halperin's Defense Department file and asked the FBI to conduct an investigation of Halperin. The DOD file arrived first. Ash in his affidavit states that with respect to Halperin and two others "there was adverse information of record which I felt should be brought to his [Kissinger's] attention; and that specifically there was information which had been of concern to the security officers of the Federal agencies from which they were being detailed. That I further advised Dr. Kissinger that any serious doubts about the issuance of security clearance to these three individuals should be reached in favor of the government and clearance denied."[2]

Kissinger turned Halperin's file over to Haig for review and to determine if he and others were "victims of overly zealous criteria." Haig testified later "in each instance I came to that conclusion and I told him so." Haig recommended that Kissinger overrule whatever concerns were

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[1] These special clearances were transferred to the National Security Council and were not cancelled until Halperin voluntarily resigned as a consultant September 19, 1969. DOD Memorandum subject: Morton H. Halperin (Security Clearance information) no date in Halperin DOD Security file. Memorandum Ash to David Whitehill Central Intelligence Agency Subject: Transfer of Accountability for Special Type Clearances, January 30, 1969; Memorandum Knolt, Chief, Special Security Center to Russell Ash subject: Transfer of Accountability for Special Clearances, March 6, 1969. Exhibits G, H and I.

[2] Ash Affidavit October 1, 1975. Contrary to Kissinger and Haig's assertions, Kissinger Response to Interrogatories at 20, Haig Deposition at 29, Ash carefully does not state that he ever recommended against hiring Morton Halperin.

expressed and hire Dr. Halperin.[1] Kissinger shared Haig's judgment that "overly zealous criteria" were being used and after discussing the matter with Haig authorized Halperin's Top Secret Clearance.[2] In his testimony before the Senate Foreign Relations Committee, after indicating that he had not read Halperin's security file, Kissinger erroneously described the incidents discussed here, as involving falsifying a passport application and not reporting a previous trip to Russia on a passport application. He went on to explain:

> In the case of Halperin, I thought that given the many travels he took it was an understandable lapse that he would forget to put down every last trip that he had taken over the requisite period.[3]

Kissinger, the official best in a position to judge the significance of the two incidents, has not changed his view about their insignificance. Referring to the two incidents, Kissinger stated, in response to interrogatories in this case: "I did not consider the information I then received as sufficiently unfavorable to warrant denial of employment and Top Secret Clearance to Mr. Halperin."[4]

Sometime after Haig reviewed the DOD file for Kissinger, the FBI on February 20, 1969 furnished the report of its investigation of Halperin. Although the FBI was aware of the two DOD episodes it did not consider them important enough even to mention in a 15 page single

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[1] Testimony of Alexander Haig in Dr. Kissinger's Role in Wiretapping Senate Committee on Foreign Relations, 93d Cong. 2nd Sess., 1974 at 247. Hereinafter "Kissinger" Wiretap Hearings."

[2] *Ibid.*, Kissinger Response to Interrogatory 15.

[3] *Ibid.*, Kissinger Wiretap Hearings at 182-83.

[4] Kissinger's Response to Interrogatory 18.

spaced report.[1] Nor did the FBI see fit to include the two episodes in the approval memorandum sent to Attorney General Mitchell. This memo, while noting contacts with Soviet nationals, stated that investigation of Halperin "did not disclose at that time any pertinent derogatory information."[2] Nor was this information included in the FBI's May 13, 1969 letter reporting the May 9 inquiries.[3]

While none of Halperin's security files disclose a propensity to leak they do reveal his views on issues, particularly on the Vietnam war. In a letter to Kissinger on May 13, 1969 Hoover provided a description of what had been learned from the earlier field investigation of Halperin. The letter did not deal with handling of classified information or a propensity to leak but rather views on the Vietnam war:

> In regard to Halperin, we conducted applicant-type investigations of him in 1962 and in February, 1969, and the investigations disclosed that he and other experts in his field are of the opinion that the United States leadership erred in the Vietnam commitment. In 1965 his name appeared on a list of individuals who responded to a request for public hearings on Vietnam by agreeing to sponsor a national sit-in. A confidential source abroad advised in 1965 that Halperin's name was on a list of Americans who reportedly received the "World Marxist Review Problems of Peace and Socialism," a communist publication.

It was Halperin's politics, not his discretion, that figured in the discussion of his employment by Kissinger in early 1969. Kissinger had, according to his public statements, been urged by all of his associates not to hire

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[1] Compare the summary of the interview of FBI agents with Halperin on June 18 [1968?] in the FBI Report of February 20, 1969 which makes no mention of Halperin incorrectly identifying the Russian with whom he had lunch with the FBI report of June 18 [1968?] which reports this incident. Halperin also informed the FBI agents at this meeting about his trip to the Soviet Union. Exhibits J and K.

[2] Memorandum Hoover to Mitchell May 12, 1969.

[3] Letter Hoover to Kissinger May 13, 1969.

Halperin[1] and had been informed by General Wheeler, the Chairman of the Joint Chiefs of Staff, that Wheeler was "concerned about Dr. Halperin's views and reliability."[2] Senator Goldwater had also written to Mitchell and Nixon complaining about Halperin's employment on policy grounds. (Exhibits L and M.) Kissinger had seen at least one of these letters.[3] Thus as Haig put it, Kissinger was aware that "there was a great deal of suspicion about the men that he had hired to work with him in a number of areas."[4] Nixon reported that he had heard Dr. Halperin's name not in connection with any discussion of leaks but rather as a "holdover" whose views differed from those of the administration.[5] Ehrlichman had only heard Dr. Halperin's name when Dr. Kissinger described him as being "untrustworthy," because he differed with the policies of the administration.[6]

The Federal Defendants have asserted that Halperin's "security file revealed a poor attitude about the care and maintenance of security information," and that there was a "potential security problem."[7] In fact, as plaintiffs have shown and as Haig and Kissinger, the defendants most familiar with Halperin's file and his duties have testified,

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[1] Kissinger Press Conference June 11, 1975 reprinted in Kissinger Wiretap Hearings at 3.

[2] Haig Deposition at 134.

[3] Kissinger Deposition at 183.

[4] Haig Deposition at 13.

[5] Nixon Deposition at 41.

[6] Ehrlichman Deposition at 13-14.

[7] Fed. Def. Memorandum at 10, 37.

there is nothing in Halperin's file to sustain this position.[1] The two incidents discussed here did not prevent Halperin from receiving additional sensitive clearances and they could not have provided probable cause to wiretap his phone.

The same contrast between the deposition testimony of defendants Nixon, Haig and Kissinger and the Federal Defendants' Memorandum is evident in the effort of the Memorandum to suggest that what was reported as said by Halperin on his phone justified the continuation of the surveillance after the initial FBI request to terminate and beyond the period when Halperin was on the NSC staff. (FD SJ Mem., 38 n.40)

Kissinger has stated flatly that nothing was heard on the surveillance that indicated that Halperin had leaked or that cast any doubt on his discretion or loyalty.[2] Both Kissinger and Haig urged Halperin not to leave the staff in September 1969.[3] Haig had "no problem" with Halperin's access to classified information as a result of what he read

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[1] Nixon at his deposition initially described the criterion based on files as "a tendency to be loose mouthed" [at 24] or "done something which suggests a tendency to leak" [at 61]. After consulting with counsel Nixon commented as follows:

> I should incidentally qualify, after consultation with Counsel, in the guidelines when I said if a guideline indicated a tendency to leak, I should expand that by saying a tendency to leak would be information in the file indicating that an individual was perhaps either sloppy or possibly, in some cases, intentionally, failed to dispose his travels abroad, conversations he had and et cetera. That kind of information. That all bears on a tendency to leak. (At 62).

[2] Kissinger Deposition at 88, 97.

[3] Kissinger Deposition at 59; Haig Deposition at 66.

of the tapped information.[1] Haig, after a review of the summary letters, stated that there was only one item in the letters and logs which could have constituted "a technical violation, if that material were still under classification."[2] This concerned Halperin informing a journalist in 1969 that Secretary of State Dean Rusk had opposed American intervention in Vietnam in 1961.[3]

Defendants memorandum now asserts that "[a] review of the summaries and pertinent logs support" the concern that Halperin "might, inadvertently, or otherwise, compromise" classified information.[4] The memorandum does not state who, if anyone, had or has this "concern" and there is nothing to indicate that any of the federal defendants did at the time. Despite the assurance by Federal Defendants' attorney at General Haig's deposition, the first involving a direct participant, that at some point a defendant would take responsibility for continuing the surveillance and explain what justified its continuance,[5] that question though asked consistently, was never answered.

Haig and Kissinger after reviewing the summary letters at their depositions did not alter their view that none gave concern about Halperin's discretion. Defendants cannot now argue that a review of the letters by their attorneys some 5 years after the surveillance ended can produce a concern which justified continuing the surveillance. Nevertheless, in light of the defendants' assertion that

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[1] Haig Deposition at 50.

[2] Id. at 48.

[3] *Id.* at 152. The conversation was reported in the Memorandum attached to the August 1, 1969 letters Hoover to Kissinger and Nixon and in the May 28, 1969 letters.

[4] FD SJ Mem. 38, n.40.

[5] Haig Deposition at 97.

some of the summaries give cause for concern plaintiff Morton Halperin has reviewed the summary letters again and again stated that they include no classified information.[1]

[1] Halperin affidavit July 15, 1976. This judgment was also reached by the House Judiciary Committee in its Report on Impeachment of Richard Nixon House Rep. No. 95-1305 at 149.

10 July 1968

EXHIBIT A

MEMORANDUM FOR THE RECORD

SUBJECT: HALPERIN, Morton H.
DOB: 13 June 1938, Brooklyn, New York

REFERENCE: (a) U. S. State Department Passport Review-3 June 1965
(b) SPR dated 17 August 1965
(c) Memo dated 8 November 1967
(d) Memo dated 13 November 1967
(e) Memo dated 18 November 1967
(f) Memo dated 3 January 1968
(g) FBI Memo dated 16 June 1965
(h) DIA Memo dated 9 July 1968

A review of the State Passport records on 3 June 1965 (a) fails to reflect any info that Subject did in fact visit Greece, Yugoslavia, or the Soviet Union as stated in (g) and (h). A recheck of State Passport should be made in an attempt to verify their records in this regard.

While attending a Soviet reception on 7 November 1967 (e) Subject had contact with [redacted]. The contacts were reportedly limited to pleasantries. Subject furnished his telephone number to them upon request, for a future luncheon and stated he would be pleased to have luncheon with them.

On 18 November 1967 (e) Subject appeared on a panel with [redacted] Soviet Union, which involved an informal discussion on the attitudes of the Soviet Union and the United States toward disarmament.

On 29 December 1967 (f) Subject, at the invitation of the above mentioned [redacted], had lunch at the Peking Restaurant.

When interviewed by the FBI on 10 June 1968 (g), Halperin advised in part, "that he had submitted memorandum to his Department, reporting the above-mentioned contacts with [redacted] and [redacted]. Subsequent being shown photographs of [redacted] and [redacted], [redacted] initialed each one and immediately recalled that he had erroneously stated in [redacted] meeting with [redacted] as he had taken place with [redacted]. He then prepared a note for himself to make the necessary correction." (He has not done so as yet.)

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Continuing, Subject advised that in 1963 while on a world tour with his wife he spent a week in Moscow in the Soviet Union which was entered by way of Israel, Greece, and Yugoslavia. He stated that, while in Moscow, they were not part of any organized tour and spent most of the time on their own. (This was in the fall of 1963.) Halperin stated that the only Russian he actually had contact with in Moscow was one [redacted], whom he had met previously in the U. S. on two different occasions between approximately 1961 and 1963 when [redacted] visited Harvard and conferred with various professors, including Halperin. He (Halperin) said he "locked up" [redacted] in Moscow where the Soviet was at the time associated with the [redacted]. Halperin said that [redacted] is an expert in the field of world disarmament and is a writer on this subject for the Soviet publication [redacted].

Conclusions

Subject was appointed a Special Assistant GS-15, OASD (ISA) on 5 July 1966, on 19 December 1967 he was appointed Deputy Assistant Secretary (Plans and Arms Control) OASD (ISA), GS-17. He was granted a TOP SECRET, ULTRA SENSITIVE clearance on 26 August 1966 which he currently holds. Administrative Instruction No. 64 was released on 10 January 1967 (Subject - Foreign Intelligence Collection Efforts).

Subject is in a position where compliance with AI-64 is extremely essential. Subject was not completely candid in the submission of his SPR on 17 August 1966 concerning his travels abroad. He appears to have a carefree attitude concerning his obligations under AI-64 in that he did not advise the Security Division of his error in identification of who he had lunch with on 29 December 1967. There is no indication at this point what other possible contacts he has had with Soviet or Satellite Nationals since he has been with OSD, which he might consider as insignificant.

Recommendations

1. Subject be interviewed and afforded an opportunity to correct his SPR dated 17 August 1966 concerning travel in Israel, Yugoslavia and the Soviet Union. At that time he should be ruled as to why he omitted this information from his SPR.

2. Subject should be counseled on the content of AI-64 and the importance of his complete cooperation in this regard.

3. After the above has been accomplished a check of CIA should be made concerning [redacted].

4. Recheck State Passport records on the subject.

5. Upon completion of the above an evaluation will be made of all information on hand.

William K. Quinlan, Jr.
Chief AAB

EXHIBIT B

1 August 1968

MEMORANDUM FOR FILE

SUBJECT: HALPERIN, Morton H.

On this date Subject was interviewed in his office (43820) regarding omission of foreign travel data in Item 12 of his SPH dated 17 August 1966. Upon reviewing his SPH, Subject stated his typist had omitted (and he had not noticed) several items of addenda:

1. Travel to Greece, Yugoslavia and the USSR in Dec 63 - Jan 64 (in addition to other countries listed for that trip)

2. His 2 sons (a 3rd was born after subm of SPH)

| | |
|---|---|
| David Elliot Halperin | DPOB: 28 Nov 62, Boston |
| Mark Evan Halperin | 11 Jan 65, " |
| Gary Isaac Halperin | 30 Mar 67, Wash, D. C. |

Subject added that his permanent (and current) address has changed effective 30 August 1967. He now resides at 8215 Stone Trail Drive, Bethesda, Maryland 22034.

Regarding the prompt reporting of contacts with Soviet bloc nationals (per AI 64), Subject stated he had met several at a Soviet Embassy party and subsequently had lunch with one of them. He stated he had submitted memos regarding these contacts. He did not mention he had reported the wrong name of the Soviet with whom he had lunch. Concerning contacts with bloc nationals prior to employment with OSD, Subject stated he had met several but maintained no contact with them.

Subject stated he has made about 10 trips abroad since Aug 66 but these have all been on official OSD business, none to communist countries. If this office desires details, his secretary, Mrs. Maffett (73331) can provide a list. I suggested that, in view of the number of changes, it might be easiest to prepare another SPH, incorporating the new information, and bring it to his office for signature. He had no objection to this suggestion.

(NOTE: Capt Pace, Exec Officer, ISA, telephonically advised Subject had submitted no memoranda regarding Soviet bloc contacts subsequently to 3 January 1968).

John S. Rice, Jr.

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EXHIBIT C

FOREIGN TRAVEL (Other than as a direct result of United States military duties)

| DATES FROM— | DATES TO— | COUNTRY VISITED | PURPOSE OF TRAVEL |
|---|---|---|---|
| une '61 | June '61 | Canada | Vacation |
| /15/63 | 12/8/63 | Japan, Taiwan, Hong | Vacation, lecturing, research |
| | | Kong, Thailand, Burma, | |
| | | India, Pakistan, Iran, | |
| | | Israel | (Continued in Item 20) |

PAGE 3

12. 1/5/64-6/30/64 England, Germany, Norway, Sweden, Denmark, France, Italy, Switzerland — Lecturing, research

9/17/64-9/21/64 England — To attend conference at Institute for Strategic Studies

(Continued)

Security Form 17 August 1962

FOREIGN TRAVEL (Other than as a direct result of United States military duties)

| DATES FROM— | DATES TO— | COUNTRY VISITED | PURPOSE OF TRAVEL |
|---|---|---|---|
| June 19[illegible] | [illegible] | [illegible] | Vacation |
| /15/63 | [illegible] | [illegible], Taiwan, Hong Kong, Vacation, lecturing, research | |
| | | Thailand, Burma, India, | |
| | | Pakistan, Iran, Israel, | |
| | | Greece, Yugoslavia, USSR | To be continued |

Item 12

| | | |
|---|---|---|
| 1/5/64-6/30/65 | England, Germany, Norway Sweden, Denmark, France, Italy, Switzerland | Lecturing, Research |
| 9/17/64-9/21/64 | England | To attend conference Institute for Strateg. Studies |

Security Form 17 August 1962

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**EXHIBIT D**

**ASSISTANT SECRETARY OF DEFENSE**
WASHINGTON, D.C. 20301

8 November 1967

MEMORANDUM FOR LIEUTENANT COLONEL CONLEE

SUBJECT: Soviet Reception

My only contacts with Soviet officials during the November 7 Reception were with Igor A. Rogachev, First Secretary, and Victor G. Komplektov, Counselor. In both cases the exchanges were limited to pleasantries. Both officials asked for my phone number and indicated that they would like to call to arrange a luncheon date. I gave then my number and indicated that I would be pleased to have lunch with them.

/s/ _____

MORTON H. HALPERIN
*Acting Deputy Assistant Secretary*
*Policy Planning and Arms Control*

**EXHIBIT E**

**ASSISTANT SECRETARY OF DEFENSE**
WASHINGTON, D.C. 20301

3 January 1968
In Reply refer to: 1-78/68

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mr. Yuly M. Vorontsov, Counselor Soviet Embassy

At Mr. Vorontsov's invitation I had lunch with him on 29 December in the Peking Restaurant.

The conversation was very general. Mr. Vorontsov seemed to have in mind only getting generally acquainted. The only points worth noting were as follows:

1. *China.* Mr. Vorontsov is, of course, keenly interested in China and seems to enjoy coming to the Peking Restaurant so that he can order his meals in Chinese. He asked a number of questions about the recent Chinese nuclear testing, to which I replied that I had not seen any of our reports on the test. He remarked that he had recently read a book which I had edited before joining the Government on Sino-Soviet Relations and that he believes several of the contributors to the volume had taken too seriously the possibility of Sino-Soviet military clashes.

2. *NPT.* Mr. Vorontsov did not appear optimistic about the NPT. He expressed great concern about the changing situation in Japan and indicated that he no longer expected that Japan would sign the treaty. I told him that Japanese public attitudes were undergoing change, but that I was confident that Japan would sign the NPT.

3. *Vietnam.* Mr. Vorontsov touched briefly on Vietnam and expressed concern about the Cambodia situation. I told him that the use by North Vietnam of Cambodia-

based camps was a matter of concern to the U.S. Government.

/s/

MORTON H. HALPERIN
*Deputy Assistant Secretary*
*Policy Planning and Arms Control*

SECURITY BRANCH
DIRECTORATE OF ADMINISTRATIVE SERVICES
SIOP-ESI ACCESS CERTIFICATE

References: a. SM-431-67 dated 20 June 67
b. JAI 2511.8 Series

SECTION I (SIOP-ESI BRIEFING)

I acknowledge that I am authorized to SIOP-ESI, Category CI, in connection with my present duty assignment.

I certify that I will not communicate, transmit, or disclose in any manner information concerning SIOP-ESI or related information entrusted to me by virtue of this authorization to any person not currently authorized access to such information, and then only when required by my duty assignment to do so.

I will not disclose to any unauthorized person the fact that I am the recipient of SIOP-ESI.

When my duties no longer require such information, I will execute the debriefing certificate as required by the references, in order that my name may be removed from the approved list of personnel authorized access.

I appreciate that a compromise of the SIOP-ESI could cause exceptional grave danger to the United States, and I do solemnly certify that I will carry out faithfully my responsibilities inherent in receiving such information.

18 Aug 1969 Morton H. Halperin

Date Signature, Grade, Service, and Service Number
MORTON H. HALPERIN, GS-17, DASD/ISA, 073 30 8125

SECTION II (SIOP-ESI DEBRIEFING)

I am aware that I am no longer authorized access to SIOP-ESI, Category_____.

Pursuant to the obligation which I incurred at the time of being authorized access to this information, I reaffirm that I will never hereafter divulge nor discuss such information which I have acquired as an authorized recipient, unless required to do so by competent authority.

App 236

Date Signature, Grade, Service, and Service Number

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**EXHIBIT C**

**FOR OFFICIAL USE ONLY**

SUBJECT: Morton H. Halperin
(Security Clearance Information)

Morton H. (initial only) Halperin, no aliases, born 13 June 1938, Brooklyn, New York, U.S. citizen, SSAN: 073-30-8125, has held personnel security clearance approvals with the Department of Defense as set forth herein.

Headquarters USAF, Washington, records reflect a Top Secret clearance was issued Halperin as a Consultant to Rand Corporation on 27 September 1961, although there is record with DSA that this Top Secret clearance was issued 19 December 1961 by the ARDC Regional Office USAF.

DISCO (Defense Supply Agency) issued a Top Secret clearance for Halperin as a Consultant, type A, 29 June 1970 to Rand Corporation, Social Science Department, superseding the clearance granted in 1961 above.

Personnel Division, Office of the Secretary of Defense, nominated Halperin for a security clearance by memorandum 2 November 1962 to Security Division, OSD, for employment as a Consultant, CASD (ISA).

Top Secret clearance was granted him 28 November 1962 by Security Division, OSD, based on full field background investigations by OSI, 19 September 1961, FBI 24 September 1962, and NAC by Security Division, OSD 20 November 1962. Halperin signed Secrecy Agreements 27 June 1962 and 11 March 1963.

Security Division, OSD, re-issued Halperin's Top Secret clearance as Consultant (ISA) 12 August 1963 based on full field background investigation by Department of State 12 February 1963.

Personnel Division, OSD, terminated Halperin's appointment as Consultant, OASD (ISA), 30 June 1966 (end of FY) and his Top Secret clearance was administratively terminated by Security Division, OSD, on that date.

Personnel Division, OSD, appointed Halperin Special Assistant, OASD (ISA), Immediate Office, on 5 July 1966. On 1 July 1966 Security Division, OSD, granted Halperin a Top Secret clearance, based on conversion of his clearance as Consultant, OASD (ISA), above. Halperin signed a Secrecy Agreement 5 July 1966. He was designated Acting Deputy Assistant Secretary of Defense, OASD (ISA), Planning and Arms Control, 17 August 1967, and appointed to this position 19 December 1967. Effective 15 April 1969 Halperin was appointed by Personnel Division, OSD, to the position of Special Assistant to the Assistant to the President for National Security Affairs, OASD(A), White House Support Group. During his employment tenure with Office of the Secretary of Defense July 1966 to 19 September 1966 Halperin was given Special Access approvals to Cofram, Cosmic, Military Space Programs, Seato, SIOP-ESI-01, and USIB Programs. He was appropriately briefed and debriefed from these programs and signed a Security Termination Statement 19 September 1969.

The National Security Council granted Halperin a Top Secret security clearance in 1969, Halperin asserts on a Personnel Security Questionnaire.

Defense Supply Agency, Contract Administration Services by memorandum 7 July 1971 to OASD(A) advised that, at its request, a check was made by the Security Officer, Rand Washington, with the Accounting Department, Treasurer's Office, Rand Santa Monica, which disclosed that since 1 January 1969, Halperin has been paid for only one eight hour period (26 August 1970) as a Consultant.

DCASR, Los Angeles, on 7 July 1971, checked with the President of Rand, Santa Monica, to determine whether there was a valid need to continue the Top Secret clearance of Halperin.

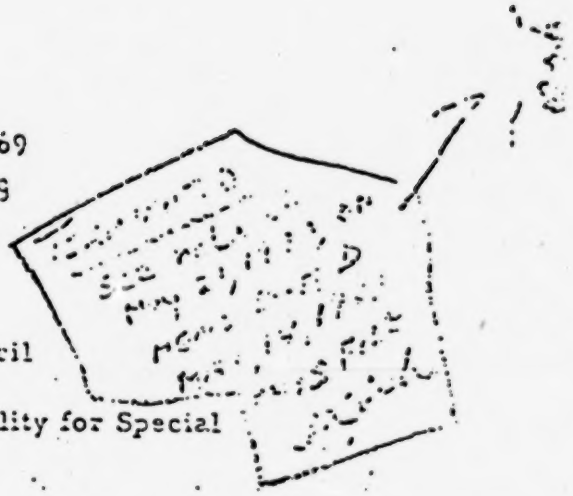
The Rand President stated that Rand will provide justification in writing for continuation of Halperin's Top Secret clearance. Rand has received a recent contract from the State Department (a User Agency) which specified that Halperin be assigned as the principal consultant (in-

vestigator) in the performance of that contract. However, DSA having since learned that the Department of State contract is at the Secret level will point out that a Secret clearance is all that Halperin will need.

EXHIBIT H

SSC-0207-69

6 MAR 1969



MEMORANDUM FOR: A. Russell Ash
National Security Council

SUBJECT : Transfer of Accountability for Special Clearances

1. Reference is made to your memorandum dated 30 January 1969, Subject: Transfer of Accountability for Special Type Clearances (Persons Transferred to or Detailed to NSC Staff from Other Agencies).

2. This is to advise that accountability for special clearances held by individuals listed in reference memorandum have been transferred from their parent organization to the National Security Council. Inasmuch as the cut off date on the input to the March 1969 machine run listing was 27 February 1969, it is doubtful if the transfer of accountability will be reflected on the March 1969 listing. However, the transfer will be reflected on the April 1969 machine run.

W. M. Knott

W. M. Knott
Chief, Special Security Center

8 MAR 1969

HALPERIN, Morton H.----------

EXHIBIT I

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 30, 1969

MEMORANDUM FOR MR. DAVID WHITEHILL
CENTRAL INTELLIGENCE AGENCY

SUBJECT: Transfer of Accountability for Special Type Clearances (Persons Transferred to or Detailed to NSC Staff from Other Agencies)

Confirming advice given to you on the telephone today, the following persons are in the process of transfer to or detail to the National Security Council Staff from other Government departments; it is understood that they hold various special, compartmented clearances; and they will need to retain them in the performance of official NSC Staff duties:

[redacted]
HALPERIN, Morton H.
[redacted]

A. R. Ash

By way of reminder, on January 28, 1969, I sent over to you Form No. 2018a concerning the following:

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EXHIBIT J

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

*Reply, Please Refer to File No.*

Washington, D. C. 20535
June 15, [redacted]

DR. MORTON H. HALPERIN

On June 12, [redacted] Dr. Morton H. Halperin, Deputy Assistant Secretary, Plans and Arms Control, Office of Assistant Secretary of Defense for International Security Affairs, Room 4E838, Pentagon Building, Washington, D. C. (WDC), was interviewed by representatives of the Federal Bureau of Investigation (FBI), at which time he furnished the following information:

Halperin said that he first met [redacted] on November 7, [redacted] at a reception at the Soviet Embassy, WDC, on the occasion of the commemoration of the [redacted] of the Soviet Revolution. He stated that the Soviet Embassy sent invitations for the reception to perhaps twenty officials of the United States Department of Defense, and he was included as a result of his present position. He pointed out that the invitations were not sent to particular officials by name but simply in a group to the Department for appropriate utilization.

[redacted] Halperin advised that, during the course of the above reception and while talking with an unrecalled [redacted], [redacted] and was introduced to Halperin by the [redacted]. Halperin said that it appeared [redacted] was aware of Halperin's identity prior to the introduction, although [redacted] did not indicate this in so many words. Conversation with [redacted] at this time was inconsequential and not recalled by Halperin. He said that [redacted] told him that he would like to have Halperin as his luncheon guest soon.

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DR. MORTON H. HALPERIN

Sometime in December, [DELETED] according to Halperin, someone telphonically contacted his secretary and made a luncheon appointment for [DELETED] with Halperin for later in the month at the [DELETED] Restaurant, WDC.

At this point in the interview, Halperin said that sometime between meeting [DELETED] at the Soviet Embassy reception and his luncheon engagement with him in [DELETED] 1967, he (Halperin) appeared [DELETED] with [DELETED] WDC, involving a discussion on the activities of the Soviet Union and the United States on disarmament. Halperin said this discussion was held in a [DELETED] situated near the Capitol in WDC.

Concerning his luncheon engagement with [DELETED] Halperin stated that they were together for about one and one-half hours, their meeting was pleasant, and [DELETED] was congenial and at ease with him. Halperin said that [DELETED] claimed to have [DELETED] knowledge of the [DELETED] In the latter connection, [DELETED] did order their lunch at the [DELETED] Restaurant [DELETED]. Halperin advised that he could not evaluate [DELETED] knowledge and experience in [DELETED] since their conversation was confined to generalities and since neither of them was willing to divulge anything of significance.

Halperin said that he had submitted memoranda to his Department, reporting the above-described contacts with [DELETED] and [DELETED]. Subsequent to being shown photographs of [DELETED] and [DELETED] Halperin identified both men and immediately realized that he had erroneously reported the luncheon meeting with [DELETED] as having taken place with [DELETED] Haperin then prepared a note for himself to make the necessary correction.

By the way of background, Halperin advised that, beginning in June of 1963, while on the faculty of Harvard University, he and his wife went on a world tour, combining business and pleasure, and starting out in the Far East

and proceeding westward. The trip included a week's stay in Moscow in the Soviet Union which was entered by way of Israel, Greece, and Yugoslavia. Halperin said that, while in Moscow, they were not part of any organized tour and spent most of the time on their own. During this period in Moscow, which was in the Fall of 1963, they had several Intourist guides, one of whom was a woman. Halperin stated that he was not aware of any surveillance while in Moscow and could not recall that anyone showed any undue interest toward him or his wife.

Halperin said that the only Russian he actually had contact with in Moscow was [DELETED] whom he had met previously in the United States on two different occasions between approximately [DELETED] and [DELETED] when [DELETED] visited [DELETED] and [DELETED] with [DELETED] professors, including Halperin. Halperin said he "looked up" [DELETED] in Moscow where the Soviet was at that time assigned and with the [DELETED]. Halperin said that [DELETED] is an expert in the field of [DELETED] and is a writer on this subject for the Soviet publication "International Affairs." Halperin said that, as of [DELETED], when he saw [DELETED] in Moscow, he (Halperin) had written nothing on the subject of China, and their mutual interest was [DELETED].

Halperin continued, stating that during the course of his world tour, he went to London, England, and remained there from September of 1963 until April of 1964, although he made several short trips out of London. From April of 1964, until June of 1964, Halperin and his wife resided in Geneva, Switzerland.

Halperin said that he did not leave Harvard University until July of 1966. While at Harvard, he was an Assistant Professor of Government and engaged in teaching International Relations which included such subjects as "American Foreign Policy" and "International Politics."

Halperin advised that, during his years at Harvard, he had occasion to meet several Russians who visited the University and sought out their particular area of interest,

none of whom he recalls other than [redacted], but he has had no further contact, through correspondence or otherwise, with any of them. In addition, Halperin stated that he has no clear recollections of any contacts with Soviet nationals in the United States after his departure from Harvard other than those reported above.

[redacted] of several Soviets, other than [redacted] and [redacted], were [redacted] to Halperin, but he could not identify any of them.

The [redacted] edition of the "Diplomatic List," published by the United States Department of State, describes [redacted]



This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

## EXHIBIT K

### FBI MEMORANDUM RE MORTON H. HALPERIN
**February 20, 1969**

Excerpt pp. 12–14

Morton H. Halperin

Dr. Halperin, when interviewed in June, advised that prior to July, 1966, he was an Assistant Professor of Government at Harvard University, Cambridge, Massachusetts. He stated during his years at Harvard University he had occasion to meet several Russians in connection with visits those individuals made to Harvard University. He said he and Mrs. Halperin were on a world tour combining business and pleasure commencing in June, 1968, and while on this tour they stayed in Moscow, Soviet Union, for a week during the Fall of 1963. Mr. Halperin advised he could not recall that anyone in Moscow showed any undue interest toward him or his wife. He said during their stay in Moscow he "looked up" one [DELETED], a Russian who had previously conferred with him and other professors on visits [DELETED] made to Harvard University in about [DELETED] and [DELETED]. He said [DELETED], an expert in the field of [DELETED] and a writer on that subject for the Soviet publication, "International Affairs." was associated with the [DELETED]. Dr. Halperin advised that when he saw [DELETED] in Moscow in 1963, he, Dr. Halperin, had not yet written anything on the subject of China, and their mutual interest was disarmament.

Dr. Halperin stated he first met [DELETED] at a reception at the Soviet Embassy in Washington, D.C., on November 7, [DELETED]. He said approximately twenty officials of the Department of Defense were invited to attend this reception and the invitations were not addressed to these officials by name but were sent to the Department of Defense for appropriate utilization. Dr. Halperin stated that [DELETED] was introduced to him at this reception

by a [DELETED] whose name he could not recall. He advised that his conversation with [DELETED] on this occasion was inconsequential and the details of their conversation were not recalled.

According to Dr. Halperin, in December, [DELETED] he appeared [DELETED] at a [DELETED] in Washington, D.C., which [DELETED] involved a discussion on the attitudes of the Soviet Union and the United States on disarmament. He said [DELETED], [DELETED] Washington, D.C., also appeared on this panel. He stated that subsequently during December, [DELETED] he had a luncheon engagement with [DELETED] in Washington, D.C., the luncheon engagement having been arranged by someone who telephonically contacted him, Dr. Halperin's, secretary. Dr. Halperin said [DELETED] as congenial and at ease, and their meeting was pleasant. He said [DELETED] claimed to have [DELETED] knowledge of the [DELETED]. Dr. Halperin advised that their conversation was confined to generalities on this occasion.

Dr. Halperin advised he had submitted memoranda to the Department of Defense reporting his aforementioned contacts with [DELETED] and [DELETED]. He said he had no recollection of any other contacts on his part with Soviet nationals in the United States subsequent to his employment by Harvard University.

With regard to the information furnished by Dr. Halperin in June, [DELETED] the files of the Department of Defense indicate that in November, [DELETED], and January, [DELETED] Dr. Halperin submitted memoranda setting forth information concerning his contact with [DELETED], mentioned by Dr. Halperin, may on identical [DELETED], a Soviet national who visited several universities in the United States, including Harvard University, Cambridge, Massachusetts, in [DELETED]. His trip to the United States was reportedly sponsored by the [DELETED].

L 641

March 10, 1969

The President
The White House
Washington, D. C.

Dear Mr. President:

After meeting with you the other evening and visiting around a bit, I feel I should write you to try and impress upon you the urgency of more rapid changes in personnel lest you lose control of the government.

You will recall, as I discussed with you, that President Eisenhower had this calamity befall him, and I don't want to see it happen to you, but if we can't move in the decision making areas and do it completely by another month, I think you are going to see trouble begin to arise.

As a good example, and you can check this with him, I saw Arthur Burns the other day and he cited me this experience that he had just recently. He had heard that there were discussions being held relative to financing Social Security out of the income tax. Naturally, this disturbed him as it would you or me, so he sent a memorandum down to the Treasury asking about this.

He received in due time a letter thanking him for this and stating that it was a very interesting proposal and that the Secretary would delve into it. Obviously Secretary Kennedy did not write this letter. He might not even have signed it but somebody did in the echelons of his think tank write it and it has probably by now some official stigma to it.

I cited to you the case of Mr. Kissinger taking Mr. Halperin, one of the really troublesome actors who was dismissed from the Defense Department, and I am hearing more and more tales of these people who caused so much trouble during the Johnson Administration being kept in their present jobs or being shuffled around so they are not lost.

I hope you will not mind my writing you on problems like these but, as I told you the other evening, our first job has been completed, that of getting you elected, and our next job of getting you re-elected has already begun and, while I have a feeling the job will be a lot easier, I don't want to make it any harder by being remiss in not [illegible]

300

In closing and on another subject, I think you know of my great interest in having Bill Quinn appointed Ambassador to Greece, and I have one further suggestion; if you haven't picked one for Ireland, one of your best friends and a wonderful Republican woman, Rose Saul Zalles, would be great for that spot.

With warm wishes and respect,

Barry Goldwater

BG/judy

AERONAUTICAL AND SPACE SCIENCES
ARMED SERVICES
PREPAREDNESS INVESTIGATING SUBCOMMITTEE
TACTICAL AIR POWER SUBCOMMITTEE
NATIONAL STOCKPILE AND NAVAL PETROLEUM RESERVES SUBCOMMITTEE

# United States Senate

WASHINGTON, D.C. 20510

PERSONAL AND CONFIDENTIAL

April 22, 1969

The Honorable John Mitchell
The Attorney General
Department of Justice
Washington, D. C.

Dear John:

First, I want you to know how much I enjoyed visiting with you at lunch the other day and I only hope we can do it once in a while in the interest of the Party.

I told you I would send you a list of names and here they are: Halperin is on the NSC staff and, as I understand it, works under Kissinger; [redacted]

These are the people who made it so hard for the military to operate in the Pentagon by their strategic papers which were forced down the throats of the Joint Chiefs and Commanders. I really thought that Mel had gotten rid of most of them but, obviously, he hasn't and unless he has a good reason for keeping them, I am afraid it will mean trouble.

With best wishes,

Barry Goldwater

OFFICE OF THE ATTORNEY GENERAL
RECEIVED
APR 25 1969

Exhibit 3

## GIFT OF PAPERS AND OTHER HISTORICAL MATERIALS OF MORTON H. HALPERIN TO A PRESIDENTIAL LIBRARY TO BE DESIGNATED

1. In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms, conditions, and restrictions hereinafter set forth, I, Morton H. Halperin (hereinafter referred to as the Donor), hereby give donate, and convey to the United States of America, for eventual deposit in a Presidential Library to be designated at a later date, my papers and other historical materials (hereinafter referred to as the Materials) which are described in Appendix A, attached hereto.

2. Title to the Materials shall pass to the United States of America upon their delivery to the Archivist of the United States (hereinafter referred to as the Archivist).

3. Following delivery, the Materials should be maintained by the United States of America in a depository administered by the National Archives and Records Service of the General Services Administration until a Presidential Library is designated by the Donor, at which time they shall be deposited in that Library and administered in accordance with the pertinent provisions of Chapter 21 of Title 44, United States Code; and, provided, that any time after delivery and subject to the provisions of paragraph 5, the Donor shall be permitted freely to examine any of the Materials during the regular working hours of the depository where they are preserved.

4. It is the Donor's wish that the Materials be made available to research to the fullest extent possible, following their deposit in the designated Library. At the same time, it is his wish to guard against the possibility of their contents being used to embarrass, damage, injure, or harass living persons, and to safeguard the interests of the United States of America. Accordingly, the Director of the designated Library (hereinafter referred to as the Director) shall have the Materials reviewed and shall place under seal the following classes of material:

(a) Material relating to the personal, family, and confidential business affairs of the Donor or of persons who have had correspondence with him.

(b) Material relating to investigations of individuals and organizations, to proposed appointments to office, or to other personnel matters.

(c) Material containing statements made by or to the Donor in confidence, unless in the judgment of the Director the reason for the confidentiality no longer exists.

(d) All other material which contains information or statements that might be used to embarrass, damage, injure, or harass any living person.

(e) Material containing statements or information the divulgence of which might prejudice the conduct of foreign relations of the United States of America.

(f) Materials which are security-classified pursuant to law or Executive order, or which contain information the public release of which would adversely affect the security of the United States of America.

5. Following the completion of the review provided for above, material placed under seal shall not be made available for inspection, reading, or use by anyone, except regular employees of the National Archives and Records Service in the performance of normal archival work on such materials, and the Donor, or persons authorized by him in writing to have access to such materials; provided that information which is security-classified pursuant to law or Executive order shall be made available only in accordance with procedures established by law or Executive order governing the availability of such information.

6. Materials which have been placed under seal as herein provided shall be kept under seal until June 30, 1976 and thereafter shall be reviewed by the Director from time to time and the seal removed from any papers which, because of the passage of time or other circumstances, no longer require such restrictions.

7. Subject to the restrictions imposed herein, the Archivist may dispose of any of the Materials which he determines to have no permanent value or historical interest, provided that prior to any such disposal the Donor shall be notified thereof, and at the Donor's request, the Materials proposed for disposal shall be returned to the Donor.

8. The Donor hereby gives and assigns to the United States of America all literary property rights which he has in (a) such of the Materials as are unpublished and (b) in such of his unpublished writings as may be among any collections of papers received by the United States of America from others and deposited in any depository administered by any agency of the United States of America.

9. In the event that the Donor may from time to time hereafter give, donate, and convey to the United States of America, for deposit in the designated Library, additional papers and other historical materials, title to such additional papers and other historical materials shall pass to the United States of America upon their delivery to the Archivist, and all of the foregoing provisions of this delivery to the Archivist, and all of the foregoing provisions of this instrument of gift shall be applicable to such additional papers and other historical materials. A description of the additional papers and other historical materials so donated and delivered shall be prepared and attached hereto.

/s/ _____

MORTON H. HALPERIN
*Donor*

*Date: 29 June 1971*

Pursuant to the authority of Chapter 21 of Title 44, United States Code, the foregoing gift of the papers and other historical materials of the Donor is accepted on behalf of

the United States of America, subject to the terms, conditions, and restrictions hereinbefore set forth.

/s/ _____

JAMES B. RHOADS
*Archivist of the United States*

*Date: June 30, 1971*

## APPENDIX A

*Box 1*

Notebook "Clifford Group 1968"
Notebook "National Security Study Memorandum 3"
Notebook "Strategic Arms Limitation Talks, Basic Book"
Notebook "Vietnam March 31, 1968–October 31, 1968"

*Box 2*

Notebook "Strategic Missile Talks"
Notebook "Vietnam DPMS 1967"
Notebook "Vietnam 1968"
Notebook "ABM"
Notebook "Vietnam Negotiations"

*Box 3*

Folders—Halperin Chron. Files July 1966–Jan. 1969 (7 folders)
Folder—Alternative Fifteen Month Program for Vietnam
Folder—Memos of Conversation
Folder—Memos of Conversation—Sr. officials
Binder "Vietnam Options 1969"

*Box 4*

Binder "Planning for Counterinsurgency"
Folder "Vietnam Bombing"
Notebook "Major Security Issues"
Binder "Vietnam Negotiations, 1967–1968"
Notebook—Vietnam Material (not marked)

*Box 9*

Notebook "Vietnam Speech"
Notebook "Vietnam June 26, 1969–"
Notebook "Vietnam"
Notebook "NSC/RG"
Notebook "Vietnam 1969"
Notebook "NSSMs—completed"

*Box 10*

3 folders—unmarked—Halperin chron. file Jan.–Sept. 1969
Memorandum to Halperin from Henderson

[Filed Jan. 18, 1976]

# In The United States District Court for The District of Columbia

Civil Action No. 1187-13

MORTON H. HALPERIN, ET AL., PLAINTIFFS,

*v.*

HENRY A. KISSINGER, ET AL., DEFENDANTS.

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## FEDERAL DEFENDANT KISSINGER'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

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Comes now Federal defendant Henry A. Kissinger, by and through his undersigned attorneys, and responds to the Plaintiffs' interrogatories as follows:

*(1) Please describe, give the date of, and identify who was present at any and all meetings which you attended during 1969, prior to May 9, at which any of the following subjects were discussed: (a) leaks, (b) wiretapping of government officials and newsmen, (c) the hiring or retention on your staff of Morton Halperin.*

Response: 1(a). With respect to meetings prior to May 9, 1969, at which leaks were discussed:

In this period, basic changes in policies were being considered which would establish fundamental approaches to major foreign policy and national security issues, including, for example, reexamination of the United States strategic posture, negotiating positions in strategic arms limitations talks (SALT), a new initiative towards the People's Republic of China, negotiations to end the war in Vietnam, defense and political issues before the Atlantic

Alliance, the Arab-Israeli dispute and East-West trade. Because of the complexity and sensitivity of these matters, we earnestly believed that secrecy with respect to their consideration and of decisions taken was of vital importance and that success or failure of particular initiatives could depend upon the maintenance of the necessary confidentiality. Consequently, there was great concern about leaks in this period.

It is impossible for me, nearly seven years later, to recall the dates of meetings at which leaks were discussed, or who was present at each. I met with President Nixon on practically a daily basis and some days, several times. We occasionally discussed the problem of leaks. From time to time I discussed leaks with several of my close associates, including Morton Halperin. The subject was, I believe, considered at various senior NSC staff meetings. I had discussed leaks with other Administration officials, as noted in responses to subsequent questions. The last conversation I had with President Eisenhower was when he called me from Walter Reed Hospital to protest that information that had been given to him by President Nixon only two days before as extremely confidential had found its way into a newspaper on the day that he called. The leak that President Eisenhower called me about concerned the National Security Council meeting on the Middle East.

Although I cannot recall the details of such meetings or discussions, the general purport was that leaking of confidential information could seriously impede the Administration's ability to formulate decisions, to implement policies and to carry on negotiations concerning foreign affairs. Certain of such meetings are referred to in the responses to subsequent questions.

1(b). With respect to meetings prior to May 9, 1969, at which wiretapping was discussed:

I recall specifically only one meeting prior to May 9, 1969 which wiretapping was discussed. That meeting occurred in the Oval Office on or about April 25, 1969. I was called into the meeting while it was in progress. The President, the Attorney General and Director Hoover

were present. The problem of leaks and how to control them was being discussed. It was at this meeting (referred to in greater detail in the response to Question 14), insofar as I know, that electronic surveillance was authorized as part of a program to discover the source of and to stop leaks.

To the best of my ability to reconstruct times and places of meetings in early 1969, the meeting referred to occurred on or about April 25, 1969, as mentioned above. In the early months of the new Administration, systems of logs and memoranda of meetings were sporadic and undeveloped. My own regular keeping of logs did not begin until October 6, 1969. Accordingly, I have not been able to confirm by any documents the exact date of this particular meeting.

During this period I met from time to time with Alexander Haig and discussed with him the electronic surveillance program authorized by the President and the role of my office as I understood it. I do not recall the exact dates of my meetings with General Haig. This occurred after the Oval Office meeting.

1(c). With respect to meetings prior to May 9, 1969, at which the hiring and retention of Morton Halperin was discussed:

The subject of the hiring and employment of Morton Halperin was, at one time or another, raised with me by President Nixon, John Mitchell, H. R. Haldeman, General Haig, General Wheeler and J. Edgar Hoover. It is impossible to fix the number of such discussions. Meetings would have been held in the President's office or in my office in the White House.

Sometime early in 1969, I was briefed orally by Russell Ash, the NSC security officer, about the security record of Morton Halperin. I am advised that one such meeting occurred on or about January 21, 1969.

The matter of reviewing security records of the NSC staff was referred by me to Alexander Haig with whom I had a number of discussions in regard to the hiring and employment of Morton Halperin.

President Nixon once called to my attention a letter received by the Attorney General from Senator Goldwater commenting unfavorably on the employment of Morton Halperin.

Chariman Wheeler of the Joint Chiefs of Staff once called on me regarding the employment of Morton Halperin. My recollection is that he recommended against Mr. Halperin's employment.

*(2) Please state what was said at each such meeting and insofar as you can remember it, who said it.*

*(a) Please state whether Morton Halperin was mentioned at any of those meetings. If so, who brought his name up, what was said about him, and by whom. Identify who was present and precisely what was said at any such meeting.*

*(b) Did you have any other conversations, face-to-face or by telephone during 1969, prior to May 9 at which any of the subjects referred to in Question 1 were discussed? If so, please indicate:*

*a) the date*

*b) the other person or persons involved*

*c) the substance of the conversation, and who said what*

*d) whether Morton Halperin was mentioned in any such conversation.*

Response: It is impossible to state what was said at each meeting referred to above. Insofar as I remember the substance or purport of particular meetings, that recollection is stated in this response and in the responses to other questions.

Morton Halperin was mentioned at certain of such meetings, including the meeting at the Oval Office referred to in the responses to Questions 1 and 14. He was also mentioned in meetings I had with Alexander Haig concerning his security status. Morton Halperin's name also came up from time to time in discussions I had with President Nixon, Attorney General Mitchell,

H. R. Haldeman and John Ehrlichman. I have no record of these discussions.

With respect to other conversations at which the subject of leaks was discussed: As stated in the responses to other questions, I had conversations on the subject of leaks with the individuals referred to in my response to Question 1(a) as well as others.

Business telephone calls from my White House office were usually monitored by my personal secretaries, who then prepared brief summaries of those conversations. The summaries are not complete, and may not, in some cases accurately reflect the substance of the conversations covered. An examination of these summaries of conversations prior to May 9, 1969, does not disclose any conversation concerning Morton Halperin or the wiretap program. They do, however, reflect some conversations in which leaks were discussed, the gist of which is set forth below.

Federal defendant Kissinger objects to providing the names of third persons not parties to this litigation on the grounds that the names of those persons are not relevant to the litigation and further that providing such names would constitute a violation of the right of privacy of such persons.

On February 3, 1969, I spoke with [A]. The summary of that conversation states, in part: "K and [A] discussed press leaks."

On February 19, 1969, I had a conversation with [B]. The summary of that conversation states, in part: "K said this was probably unnecessary call but President is very anxious that there be no leaks of any sort about trend of the discussion today. [B] said he would say nothing."

On March 18, 1969, I had a conversation with [C]. The summary states, in part: "HAK said the President's first concern was if the things we are trying to do leaked, it would lose its effectiveness."

On March 28, 1969, I had a conversation with [D] regarding stories in the *Times* and *Post* on March 27 and March 28. [D] reported on his unsuccessful efforts to find the source of the leaks.

On April 4, 1969, I had a conversation with [E] concerning an article in the *New York Times*. The summary of that conversation states, in part: "[E] said if we were in Hanoi's position and we saw it in the newspaper we would think they were exploiting private talks for political purposes. K said that is right . . ."

On April 7, 1969, I had a conversation with [F]. The summary states, in part:

> "HAK said to [F] 'You are getting into a great negotiating position—they are all giving away Vietnam in the newspapers'. [F] wished people wouldn't talk so much. He referred to [G]. [H]—that isn't going to be very helpful. He also referred to [I's] remarks . . . HAK asked if all this will hurt us in Vietnam and [F] said yes."

On April 8, 1969, I discussed an article with [J]. We both agreed we would like to find out the source of the article.

On May 1, 1969, I discussed with [L] the *New York Times* story on the NSC review of American military policy. The summary states in part:

> "[L] said on reading NYTimes this morning re result of the NSC review of American military policy, he projected it few weeks ahead and saw similar story on our SALT review. K said this did not come from the White House and [L] asked whether President could not point out how absolutely intolerable this is. K said he was outraged by it. [L] said there was a story a few weeks ago that looked like it had Pentagon origin. K said [M] is clearly an [N] correspondent. [L] said he hopes the President asks [O] to get his troops in better array from now on. K said he would do what he could."

On May 2, 1969, I had a conversation with [P], in which we disucssed a news story. The summary states, in part:

> "[P] then brought up [R] story—said it did not come from there. [P] said he had very confidential information that it came from college roommate in K's shop who has long talks with [R]. K said he would not stand for that. [P] said he would try to check it out a

little more. K said his staff has orders not to talk to press on anything."

On May 7, 1969, [Q] and I had a conversation concerning our negotiations with the North Vietnamese. The summary states, in part: "[Q] said they were very worried about the leaks. They were serious about private talks but they doubted that we were."

*(3) Did the subject of the legality of electronic surveillance ever come up in any of these meetings or conversations? If so, state as precisely as you can what was said and by whom.*

Response: As noted in response to Question 14, the subject of the legality of electronic surveillance came up in the Oval Office meeting. It was my understanding, gained at that meeting, that President Nixon had been assured by the Attorney General that the proposed program was legal and that procedures were in place for carrying out of such a program. Director Hoover also assured President Nixon that the practice had been carried out on numerous occasions in prior administrations and that there was no question as to its legality.

I do not recall any other conversations with the Attorney General regarding the legality of the wiretapping program and procedures. My recollection is, however, that the Attorney General was very firm in his view that the program was legal and consistent with established practice. I did not then question the Attorney General's opinion, nor do I recall anyone ever suggesting, before or while the program was in effect, that it was unlawful or not in accordance with established procedure.

*(4) At any of those meetings did Mr. Nixon, in your presence, ever authorize Mr. Hoover to conduct an electronic surveillance program. If so, identify the date of the meeting, and precisely what authority Mr. Nixon gave to Mr. Hoover. State who else was present or then or later knew of such authorization.*

Response: As stated in the response to Question 14, President Nixon, in my presence, authorized the program of wiretapping as described in that response. I do not re-

call any discussion as to the President's precise authority but the Attorney General confirmed that the program as authorized was legal.

*(4 A) Did Mr. Nixon ever specifically authorize Mr. Hoover in your presence to conduct a surveillance of Morton Halperin? If so, specify [sic] the meeting, who was present and precisely what Mr. Nixon said and what he authorized Mr. Hoover to do.*

Response: At the Oval Office meeting in April 1969, President Nixon authorized an electronic surveillance to be conducted of the scope stated in response to Question 14. While his authorization was in general terms and not limited to specific individuals, my understanding was that he then directed surveillance of Morton Halperin and certain others.

*(4 B) Was it ever represented to you by any person that Mr. Nixon had given either of the authorizations referred to in questions 4 and 4A? If so, by whom was it so represented, when and what were you told?*

Response: As stated in the responses to Questions (4) and (4A), the authorizations referred to in questions (4) and (4A) were given in my presence, in the manner described in my responses to those questions. I do not know of any other authorizations and I have no recollection of any authorizations being represented to me by any other person.

*(5) At any of these meetings or on any other occasion, did Mr. Nixon or anyone else direct or request you to participate in any way in an electronic surveillance program or in any action which you understood would lead to or be connected with such surveillance?*

Response: As stated more fully in the responses to other Questions, at the Oval Office meeting I was requested to supply the names of key individuals who had access to sensitive information which had leaked. I do not recall that either President Nixon or anyone else directed or requested me to participate in any other way in any electronic surveillance program or any other action which I understood would lead to or be connected with such sur-

veillance, except as I have stated in responses to other Questions. See particularly responses to Questions (4), (4A), (4B), and (14).

*(6) At any of these meetings or any other occasion did Mr. Nixon direct you to have your office submit to the FBI (a) a specific request that an individual be wiretapped or (b) a suggestion to that effect.*

Response: At the Oval Office meeting in April, 1969, I was requested to supply the names of key individuals having access to sensitive information which had leaked. The direction to me was in general terms. Except as stated in the responses to Questions (4A) and (14), I do not recall any specific request or suggestion by President Nixon that any particular individual be wiretapped.

*(7) At any of these meetings, in your presence, did Mr. Nixon direct Mr. Mitchell to approve any wiretap requests conveyed to the FBI by your office.*

Response: Except as stated in the responses to Questions (4A) and (14), I do not recall that, at any meetings, President Nixon, in my presence, directed Mr. Mitchell to approve any particular wiretap requests. President Nixon authorized and directed that the program be carried out.

*(7 A) If the answer to any of question 5, 6, or 7, is yes, please identify the occasion, the date, and as precisely as you can, what the President said. Also, please state who else was present and who, then or later, knew of such directions.*

Response: Details, to the best of my recollection, of the meeting referred to in the response to Question 5, are set forth in the responses to Questions (4), (4A), (4B), and (14).

*(7 B) Was it ever represented to you that Mr. Nixon had given directions referred to in questions 5, 6, or 7? If so, by whom, when, and what were you told?*

Response: Not that I recall. See the responses to Questions (4B), 5, 6 and 7.

*(8) Please identify any and all documents you may have consulted and any and all conversations you may have had to refresh you [sic] recollection in answering questions 1 through 7B.*

Response: To refresh my recollection in answering questions (1) through (7B), I have consulted my testimony on the subject of wiretapping on several occasions before the Senate Foreign Relation Committee and documents furnished to me in connection with that testimony. I have also consulted my appointments book and memoranda of telephone conversations. I have also reviewed parts of certain depositions and affidavits heretofore filed in this proceeding.

*(9) Did any of the meetings and conversations referred to in interrogatories 1 through 7B take place as a result of specific leaks? Were specific leaks discussed at any such occasion? If so, please identify each leak which was discussed at such meeting or in such conversation.*

Response: I am certain that most, if not all, of the principal successive leaks were discussed in conversations I had with President Nixon and others as mentioned in the response to Question 1(a). At this date, I cannot place the time and purport of paritcular conversations, except those mentioned in responses to other questions, particularly in the responses to Questions 2 and 14. I am certain that I expressed my profound concern over the fact that the contents of secret documents and meetings were being leaked and for the effect of leaks and their implications on our negotiating ability and indeed ability to carry on a constructive foreign policy for the country. Set forth is a list of various articles appearing in the press prior to May 9, 1969, which may have been the result of or influenced by leaks. The list is neither complete nor accurate. It is impossible for me, at this date nearly seven years later, to identify each leak. I feel certain that most of the leaks, and in any event the principal leaks, were the subject of discussions and expressions of concern by me and others involved in policy formulation.

—an article in the *New York Times*, February 3, 1969, entitled "U.S. Will Accept French Proposal on Mideast Talks", giving details of the NSC meeting February 1.

—an article in the *Washington Post*, February 3, 1969, entitled "US Backs Big 4 Move in Mideast".

—an article in the *Washington Post*, February 26, 1969, entitled "War Review Seen as Highly Optimistic", discussing an NSC study of the Vietnam War.

—an article in the *New York Times*, March 27, 1969, entitled "Nixon is Pressed to Decide on Aid", and an article in the *Washington Post*, March 28, 1969, entitled "Nixon to Seek More Foreign Aid, Agency Reorganization". Both articles discuss a recently completed NSC study.

—an article in the *New York Times*, April 4, 1969, entitled "President Nixon's Decision and Dilemma", discussing possible troop withdrawals from Vietnam.

—an article in the *New York Times*, April 6, 1969, entitled "Nixon has Begun Program to End War in Vietnam", discussing what the author calls "an essentially secret program of diplomatic and military measures designed to extricate the U.S. from Vietnam".

—an Article in the *Washington Post*, April 7, 1969, entitled "Laird's Trip to Vietnam Sets the Stage for Rapid U.S. Troop Withdrawals".

—an article in the *Washington Post*, April 8, 1969, entitled "Laird, Kissinger Approaches Affect President's Peace Plan".

—an article in the *New York Times*, April 9, 1969, entitled "US Bases Abroad Stir a New Debate" describing the conclusions of a secret study regarding United States' overseas military bases.

—an article in the *New York Times*, April 14, 1969, entitled "Soviet Missile Deployment Puzzles Top

U.S. Analysts", discussing results of U.S. satellite reconnaissance.

—an article in the *Washington Post*, April 14, 1969, entitled "Presidential Brothers Can be a Pain", subtitled "Doubtful AMB", discussing doubts in the Pentagon about the U.S. ABM program.

—an article in the *New York Times*, April 17, 1969, entitled "Readiness of U.S. Fast Reaction Forces in Korea is Stepped Up", discussing the U.S. strategy in the wake of the downing of reconnaissance plane.

—an article in the *New York Times*, April 22, 1969, entitled "A Series of Limited Pacts on Missiles Now U.S. Aim", discussing the U.S. strategic arms policy in relation to the Soviet Union.

—an article in the *New York Times*, April 24, 1969, entitled "Paris Peace Talks Said to be Stalled".

—an article in the *New York Times*, April 24, 1969, entitled "Posting of U.S. Intelligence Ship off Korea Believed Under study", discussing further U.S. reaction to the shooting down of reconnaissance plane.

—an article in the *Washington Star*, April 25, 1969, entitled "President Could 'Arm' Safeguard After Firing".

—an article in the *Washington Post*, April 27, 1969, entitled "U.S. Unit Repulses Attackers", discussing U.S. military policy towards Cambodia.

—an article in *New York Times*, May 1, 1969, entitled "Administration Gets Study of Global Nuclear Strategy", accurately summarizing a study of our strategic forces prepared in connection with SALT.

—an article in the *New York Times*, May 6, 1969, entitled "Aids Say Nixon Weighed Swift Korea Reprisal discussing the U.S. response to the shooting down of a Navy reconnaissance plane.

—an article in the *New York Times*, May 6, 1969, entitled "Safeguard's Cost was Overstated".

*(10) Did the question of who had access to the material which was leaked come up at these meetings? If so, was the name of Morton Halperin discussed in connection with access to this material?*

Response: I am certain that access to materials was discussed at meetings or in conversations concerning leaks, although I cannot recollect specific meetings or their dates. Discussions certainly would have been occasioned by each new major leak. Likewise, I am quite certain that the name of Morton Halperin was discussed in connection with access to various materials in discussions with President Nixon, General Haig, possibly the Attorney General, and probably Director Hoover. It is possible that the access of Morton Halperin to a broad range of NSC materials could have been raised in such discussions. I do recall several discussions with General Haig as to who had access to materials that were leaked.

*(11) Please indicate each place in your testimony before the Senate Foreign Relations Committee, reproduced in U.S. Senate Com. on For. Rel., 92d Cong. 2d Sess.,* Hearings on Dr. Kissinger's Role in Wiretapping *("Hearings") at which the name Morton Halperin is deleted. Please also indicate any place in which material referring to Mr. Halperin or the surveillance of Mr. Halperin is deleted and indicate what the substance of that deletion is.*

Response: Set forth below is a list of the places in my testimony before the Senate Foreign Relations Committee, reproduced in "Hearings before the Committee on Foreign Relations, United States Senate, Ninety-Third Congress, Second Session, on Role of Dr. Henry A. Kissinger in the Wiretapping of Certain Government Officials and Newsmen," at which the name or any mention of Morton Halperin is deleted, together with the text of the deleted material. This list was prepared from confidential transcripts of the relevant testimony furnished to me by the Senate Foreign Relations Committee for the purposes of this response. Such transcripts include only my own testimony and not the remarks of others.

| *Page No. of Hearings* | *Line No.* | *Text of Deleted Material Requested* |
|---|---|---|
| p. 176 | 25 | . . . .and Halperin |
| p. 182 | 15 | Halperin |
| | 19 | Halperin |
| | 22 | Halperin |
| | 23 | Halperin |
| | 39 | (1) Halperin (2) he falsified a passport application with respect to his connection with his contacts with Soviet citizens. |
| p. 182 | 40 | not reported on a passport application a visit to the Soviet Union that he had made previously. |
| | 41 | Halperin |
| p. 183 | 1 | (1) Halperin (2) many travels |
| | 2 | forget to put down every last trip that he had taken over the requisite period. |
| | 5 | Halperin |
| | 35 | Halperin |
| p. 184 | 8 | Halperin |
| | 12 | Halperin |
| p. 185 | 38 | (2) Halperin |
| p. 186 | 1 | Halperin |
| p. 193 | 37 | In the case of one other person, we gradually separated him from a classified documents job to such a point he felt he wanted to resign, but this was an attempt on my part to minimize the damage to the individuals themselves. |
| p. 216 | 15 | (2) Halperin |
| | 20 | (1) Halperin |
| p. 331 | 40 | Halperin |

| *Page No. of Hearings* | *Line No.* | *Text of Deleted Material Requested* |
|---|---|---|
| p. 332 | 1 | Halperin |
| p. 332 | 5 | Morton Halperin |
| | 11 | discovered as the source of the information |
| | 18 | Halperin |
| p. 338 | 22 | (2) by Mr. Halperin |
| p. 219 | 32 | (1) Halperin |
| | 38 | (2) Halperin |
| p. 222 | 19 | (1) Halperin |
| p. 223 | 22 | Beginning in May of 1969, Mr. Halperin was denied access to some of the most sensitive information. After a few months he became dissatisfied and indicated that he wished to leave the NSC staff. Since the information developed through the taps regarding Halperin indicated indiscretions on his part, not blatant breaches of security, and since it seemed to me that he could perform worthwhile work in defined areas, he was retained as a consultant. |

*(11 A) On page 182 of your testimony, please identify which of the paragraphs concern Dr. Halperin and provide all of the information provided to the Committee at that point about Dr. Halperin. Please indicate the basis for the information reported to the Committee at that time.*

Response: The third full paragraph of my testimony on page 182 concerned Halperin. The sixth paragraph of my testimony on page 182 also included Halperin as one of the individuals referred to. The tenth full paragraph concerned Halperin. The text of that paragraph without deletions, reads as follows:

> "In the case of Halperin there was an FBI allegation that he falisfied a passport application with respect to his connection with his contacts with Soviet

citizens and that he had not reported on a passport application a visit to the Soviet Union that he had made previously. This was the range of allegations that was made about Halperin."

The basis for the information reported to the Committee at that time was data furnished to me by the NSC or FBI security personnel.

*(12) Please identify all places in which the names Helmut Sonnenfeldt, Daniel Davidson, Robert Pursley and Henry Brandon are deleted from the text of your testimony reprinted in the "Hearings". Please provide any deleted testimony related to the decision to institute surveillance of Daniel Davidson, Helmut Sonnenfeldt, Henry Brandon and Robert Pursley, excluding the discussion of the institution of the second surveillance of Helmut Sonnenfeldt and any statement of the content of overheard conversations.*

Response: Federal defendant Kissinger objects to responding to this interrogatory on the grounds that it is not relevant to the litigation since none of the third persons mentioned is a party to the litigation. Further, to respond to this interrogatory would constitute an infringement of the right of privacy of the third persons.

*(13) In your testimony before the Senate Foreign Relations Committee on September 17, 1973, as reprinted in Statement of Information of the House Judiciary Committee, Book VII, p. 149, you state that the first discussion that you participated in or knew about regarding the possibility of electronic surveillance occurred on the day on which the* New York Times *published the Beecher story concerning the bombing of Cambodia, which would have been May 9, 1969. Please indicate whether it is still your testimony that that was the first day on which you heard any discussion of the possibility of electronic surveillance. If that is no longer your belief, please specify precisely what documents you consulted or what conversations you had which led you to change your belief that you participated in no such conversations or discussions prior to the date of the Cambodian bombing leak.*

Response: As I stated before the Senate Foreign Relations Committee on July 23, 1974, the record-keeping system in my office was erratic and not developed in my initial months in Washington. Subsequent to my testimony in September, 1973, I consulted White House logs, which established that I left Washington on May 7, 1969 for Key Biscayne, Florida, and did not return until May 11. Since my recollection is that the meeting at which the wiretap program was initially discussed and authorized took place in the Oval Office, it could not have occurred on May 9. The meeting most likely occurred on April 25, as more fully stated in response to Question 14. Insofar as I can recall, the Oval Office meeting was the first day on which I heard any discussion of the possibility of electronic surveillance.

*14. In your testimony before the Senate Foreign Relations Committee on July 23, 1974 (Hearings p. 171) you stated that some time in April 1969 you were called into a meeting then going on in which the Attorney General, Mr. Hoover, and the President were present and that you were told that wiretaps would be conducted in order to identify leaks and that you were to cooperate by supplying the names of key individuals having access to sensitive information which had leaked. Please identify as precisely as you can when and where this meeting took place, and on the basis of what documents and conversations you were led to this conclusion. Specify precisely what was said at that meeting.*

Response: As I testified before the Foreign Relations Committee, in the early days of the Administration, systems of logs and memoranda of meetings were erratic and not developed. I have not been able to confirm by any documents the time of the meeting in question. However, it appears that this meeting most likely occurred on April 25, 1969. On that day (according to White House, F.B.I. and Department of Justice logs) the Attorney General and Mr. Hoover were at the White House before leaving with the President by helicopter for dinner at Camp David. I was at the White House all day and did not go to the Camp David dinner.

The meeting took place in the Oval Office at the White House. It was in progress when I was called in. President Nixon, Mr. Mitchell and Mr. Hoover were present. I was informed, I believe by the President, that the problem of leaks was being discussed. I was told that the President had decided to go back to the previous practice of using wiretaps as the most effective means of discovering leaks. I was also told that three categories of individuals would be subject to wiretaps: those with unfavorable information in their security files, those who had access to information which had leaked, and those whose names appeared as sources or recipients of leaked information in FBI investigations, including wiretaps. These categories were established, insofar as I know, as a result of discussions among the President, the Attorney General and Mr. Hoover. I was asked to supply the names of key individuals having access to sensitive information which had leaked. I was informed that the practice and procedures for such a wiretap program were well-established. There was some discussion of procedures and of candidates for electronic surveillance. Director Hoover identified four persons as security risks and suggested that these four be put under surveillance initially. Three of these—Morton Halperin, [A], and [B]—were individuals who had been previously identified as representing potential security problems. The fourth was [C], whom Hoover claimed had connections with foreign intelligence services, and had been tapped in previous Administrations. I believe the Director also recommended physical surveillance of [D]. It was my understanding that President Nixon directed surveillance of the persons then suggested by Director Hoover.

In the course of the meeting I was assured that the wiretap program envisioned was entirely lawful in the opinion of the Attorney General and that the Bureau had established procedures for such a program. Director Hoover assured President Nixon that wiretapping in similar situations had been a common practice in previous Administrations and confirmed that procedures were well established and that there was no question as to legality.

With respect to persons not identified by name, see objections to Interrogatory 2 and Interrogatory 12.

*15. You stated in your July 1974 testimony (p. 176) that at the "April" meeting referred to in the previous question, Mr. Hoover suggested four persons who should be put under surveillance and that three of them were members of your staff considered security risks by Mr. Hoover. Please identify these four individuals. Was one of them Morton Halperin? Did Mr. Hoover state on what basis he believed that these individuals to be put under surveillance were security risks?*

Response: The four individuals suggested by Mr. Hoover were Morton Halperin, [E], [F] and [G]. Except as mentioned in the response to Question (14), I do not recall whether, at the meeting in the Oval Office, Mr. Hoover stated the particulars as to why he believed the respective individuals were security risks.

With respect to persons not identified by name, see objections to Interrogatory 2 and Interrogatory 12.

*16. If Morton Halperin was one of the three individuals referred to by Mr. Hoover as security risks, did Mr. Hoover state any information that led him to this belief? If so, what was the information? Did you at that time challenge or support or make any other comment upon Mr. Hoover's assertion that Mr. Halperin was a security risk? Had Mr. Hoover made any other statement to you concerning Mr. Halperin's security status? Did you ask Mr. Hoover or the FBI to specify what information led him to the judgment that Mr. Halperin was a security risk? Did you ask him to relate that judgment to the material contained in the FBI investigation of Morton Halperin that had been provided to you by the FBI.*

Response: Soon after I hired Mr. Halperin, I became aware that the FBI had questions concerning Mr. Halperin's security status. I asked General Haig to review the files and, based upon General Haig's report of those files, I continued the employment of Mr. Halperin. I do not recall my debate with Mr. Hoover as to the merits of his or the FBI assessment of Mr. Halperin's security status.

I would assume that Mr. Hoover based his judgment on the material in Mr. Halperin's security files, although there may have been other reasons for his judgments.

*17. You testified that the three individuals were ones against whose employment the FBI had recommended "either because of security information in the files or information which was not formally in the files." (p. 176) Please specify precisely when and where the FBI recommended against the employment of Morton Halperin. Explain what information in the files or "not formally in the [FBI] files" was shown to you or discussed with you in this connection? By whom? Please reconcile your testimony with the FBI and NSC security files for Mr. Halperin which contain no such recommendation.*

Response: Russell Ash, who acted as National Security Council liaison with the FBI, discussed with me in January 1969 the security records of the persons I had hired or proposed to hire. At that time he briefed me on the security records concerning Mr. Halperin and stated that there was adverse information of record concerning Mr. Halperin that he felt should be brought to my attention. My recollection is that Mr. Ash recommended against hiring Mr. Halperin. I directed General Haig to review the security files and report to me. In any event, I approved a Top Secret security clearance for Mr. Halperin. I do not recall the particulars of any discussion I may have had with others concerning the information then available relevant to giving Mr. Halperin a Top Secret security clearance.

*18. In your testimony you state that Morton Halperin had unfavorable information in his files. (P. 132) Please examine the files as they have been provided to the plaintiffs and identify that information which you or anybody else considered unfavorable. If any such information is not in the files provided plaintiffs, please state what it is, and make it available.*

Response: As noted in my response to Question 17, I do not recall personally reviewing Mr. Halperin's security files, but I was briefed on them, and my testimony referred to in the above question was based on briefings

given to me. I note in the material now furnished to me that the following two items might be regarded as unfavorable, although, as I have stated repeatedly, I did not consider the information I then received as sufficiently unfavorable to warrant denial of employment and Top Secret clearance to Mr. Halperin.

*Item 1*

A memorandum from W.C. Kiker to the Assistant Secretary of Defense (Administration), dated July 9, 1968 notes, regarding Halperin's failure to report a visit to Greece, Yugoslavia and the Soviet Union: "This omission seems rather strange in view of the listing of all the other countries visited and would appear to be a serious omission on a statement of Person. History leading to access to sensitive information."

*Item 2*

A document entitled "Memorandum for the Record", dated July 10, 1968, states as follows, in part: "Subject is in a position where compliance with AI–64 is extremely essential. Subject was not completely candid in the submission of his SPH on 17 August 1966 concerning his travels abroad. He appears to have a carefree attitude concerning his obligations under AI-64 in that he did not advise the Security Division of his error in identification of who he had lunch with on 29 December 1967. There is no indication at this point what other possibile contacts he has had with Soviet or Satellite Nationals since he has been with OSD, which he might consider as insignificant".

*19. You testified further (p. 176) that you had hired the three individuals Mr. Hoover opposed, including apparently Mr. Halperin, overruling "the security man on your staff." Please identify who this individual was, and when and how he made the recommendation that Mr. Halperin not be hired, and on what basis he made that recommendation. If "the security man" is Russell Ash, please reconcile this statement with Mr. Ash's handwritten note of*

*March 3, 1969, in Mr. Halperin's NSC security files which does not recommend against hiring Mr. Halperin.*

Response: As stated in my response to Questions I (c) and 17, Russell Ash was the security man on my staff and briefed me on Mr. Halperin's security files in January 1969. I am not in any position to reconcile Mr. Ash's illegible handwritten note of March 3, 1969, with his briefing to me in January 1969. My testimony about "over-ruling the security man" on my staff refers to the fact that there was adverse information of record and that he advised that doubts should be resolved against clearance. I mention again that, despite FBI opposition in January 1969, I nevertheless hired Morton Halperin and continued his employment.

*20. You testified that the only people identified by Mr. Hoover at these meetings as potential leakers were those previously identified by Mr. Hoover as security risks who were hired over his objections. (p. 133) If this included Morton Halperin, did Mr. Hoover state at this meeting that Mr. Halperin had been hired over his objections?*

Response: With respect to the identification by Mr. Hoover of potential leakers at the Oval Office meetings, see the response to Question 14. I do not recall whether or not Mr. Hoover stated at that meeting that Mr. Halperin had been hired over his objections.

*21. You stated at your Salzburg press conference that three of the four people first tapped who were on your staff were hired by you "over the strong objection of all of my associates." Please identify which associates you had in mind and where and when and in what form they made known to you their objections to hiring of the three individuals and specifically of Mr. Halperin. (Text in "Hearings" at p. 6).*

Response: In my Salzburg press conference, I was speaking broadly and in general terms. Insofar as the statements related to Mr. Halperin, it is, I think, fair to say that not only was his employment in a particularly responsible and sensitive position objected to on grounds of security, but also on grounds of compatability. Also Mr.

Halperin was associated with previous Administrations and in other Departments, and I was informed he had been the subject of controversy. For certain particulars, see the response to Question 1(c). Nevertheless, as previously mentioned despite knowledge of general opposition to my doing so, I did hire Mr. Halperin.

*22. In your testimony you state that three or four of those tapped were tapped because "they were the only ones who could be identified at the time of the original decision as potential leaks or security problems" by Mr. Hoover. (p. 132) Please identify when this "original decision" that you refer to in that sentence was made, who was present, and on what basis the judgment was made that these individuals were the only ones who were potential leakers or had security problems. Please indicate if you concurred in this judgment. Please identify the three individuals that you refer to.*

Response: The "original decision" referred to was made at the Oval Office meeting in April 1969, more fully described in my response to Question 14. President Nixon, Mr. Hoover, Attorney General Mitchell and I were there. Messrs. Halperin, [H], [I] and [J] were the individuals suggested by Mr. Hoover. My understanding was that the first three mentioned were not necessarily the only potential leakers, but were those considered by Mr. Hoover as most likely suspects along with [K].

Everyone who had access to the leaked information was a "potential leaker," including myself. Messrs. Halperin, [L] and [M] were the only NSC staffers whose security files presented problems, insofar as I recall.

With respect to persons not identified by name, see objectives to Interrogatory 2 and Interrogatory 12.

*22 A. [sic] Were you ever criticized by any government official prior to May 9, 1969, for hiring Morton Halperin? Did you ever hear indirectly that you had been so criticized? If so, give details of date, person, place and substance of statement.*

Response: I cannot recall details of dates, persons, places or substance of all such statements that might have

been made to me or that I might have heard critical of my hiring Morton Halperin. For further details, see the responses to Questions 1(c) and (21).

*23 B. Did you ever state to John Ehrlichman that you wished to fire or wished you could fire Morton Halperin? Did you ever state to Mr. Ehrlichman of anyone else that Mr. Halperin was "singularly untrustworthy", or that he was a "carryover" from the previous administration? If so, when, where, who else was present and what was said. If not, do you have any explanation for the testimony given by Mr. Ehrlichman at pages 13 and 8 of his deposition: (not yet filed).*

Response: I do not recall stating to Mr. Ehrlichman or anyone else that Mr. Halperin was "singularly untrustworthy" and certainly could not have made such a statement in 1969–70. I could have stated that he was a "carryover" from the previous Administration which, of course, generally speaking, was the fact. I do not attempt to explain, amplify or deny Mr. Ehrlichman's deposition.

*23 C. Did Mr. Nixon ever state to you that Morton Halperin was disloyal to him or to the country? If so, when, where, who else was present, on what was the statement based, and what was said?*

Response: I do not recall such statement.

*24. Was it ever represented to you that Mr. Nixon has made a statement as described in question 23C. If so, give details.*

Response: Not that I recall.

*25. If as you told the Senate committee the "April" meeting was held following some serious leaks, why was it that the program was to go into effect only on the date of the first significant leak thereafter? (Hearings, p. 171) If the surveillance program was to go into effect at the time of the next leak, following the meeting which you say took place on April 25, why did it not go into effect when the EC-121 leak was printed on May 6, 1969? If it was the case that the surveillance was to go into effect at the time of the next significant leak, were you or was anyone else*

*desig[illegible]d by Mr. Hoover to advise Mr. Hoover of whether such a leak occurred? Is it not the case that Mr. Hoover himself would not be aware of whether a newspaper story related to foreign and military power constituted a leak as opposed to the provision of material to the press by senior officials authorized to do so.*

Response: My understanding of the April meeting was that an electronic surveillance program was authorized by the President, and that Mr. Hoover, when he thought this method appropriate, could use electronic surveillance on persons within the categories that had been established; as stated in response to Question 14. I have no recollection that a particular time for beginning the actual wiretaps was discussed. I was not designated to inform Mr. Hoover of the first significant leak. In view of the President's authorization, Mr. Hoover evidently chose to institute the wiretaps after my calls to him on May 9, regarding the national security significance of the Beecher story in the *New York Times* of the same date.

*26. You stated in your July 23rd, 1974 testimony (p. 176) that at a meeting on April 25, 1969, four names were "established based on the recommendations of the Director of the FBI. Explain what you mean by established. Did the President specifically authorize wiretaps of these individuals at that meeting? At any other time? You testified that the wiretaps were to be on three of "your people" and one journalist. Were the three of your people Morton Halperin, Helmut Sonenfield [sic] and Daniel Davidson? Was the one journalist Henry Brandon? (Hearings, p. 176).*

Response: The subject matter of Question 26 is covered by prior questions, and for the response to Question 25, please refer to responses to such questions.

*27. You testified further that the Director of the FBI recommended at the "April" meeting that three individuals on your staff in case of leaks should be subjected to wiretapping. (P. 177). Since leaks had already occurred at the time of the meeting, what is the meaning to the phrase "that in case leaks occurred, they should be subjected to*

*wiretapping." Did this indicate that surveillance of them was authorized only if leaks occurred of information to which they had access?*

Response: I do not attach any particular significance to the phrase missquoted in Question 27. The wiretapping program was authorized as stated in the responses to previous questions and became operative some days later.

*28. In your testimony (Hearings, p. 182) you state that the three people selected–apparently Halperin, Sonnenfeldt and Davidson–were identified by the FBI as potential leakers. Was this based on an analysis of the particular leaks and who had access to that information? Did you discuss with the Director of the FBI whether any one of the three people had access to any of the leaked information?*

Response: I do not recall any analysis of particular leaks and access to information in relation to Mr. Halperin. At that time Mr. Halperin had access to the entire gamut of NSC activities. I do not recall any particular discussion with the Director of the FBI as to the access of Mr. Halperin to any particular leaked information. In his telephone conversations with me on May 9, 1969, and in his letter to me of May 13, 1969, Director Hoover identified Mr. Halperin as a possible source of the leak then being investigated by the FBI.

*29. With regard to the affidavit filed by you in Ellsberg v.* Mitchell, *et al, (reprinted H. Jud. Comm. Statement of Information on Behalf of Pres. Nixon, Bock IV, P. 143) [sic] please indicate whether the explanation of the origin of surveillance of Mr. Halperin contained in paragraph 7 and 8 of that document is still your view of how the surveillance began. If it is not, please explain when you changed your position, on the basis of consultation of what documents, and what conversations?*

Response: I affirm the statements in paragraphs 7 and 8 of my affidavit referred to in Question 29, except that I now believe that the meeting I referred to occurred in April rather than early May as mentioned in my response to Question 14.

*30. For each leak mentioned in your affidavit, please indicate whether Mr. Halperin had access to the information in the leak stories.*

Response: While I cannot be certain, I believe Mr. Halperin had access to the information in the leaked stories mentioned in my affidavit referred to above.

*31. With reference to the leaks which occurred after Mr. Halperin left the government and which were based on information developed in the government after Mr. Halperin's departure from the government, please explain the relevance of these leaks to the continuation of the electronic surveillance of Mr. Halperin.*

Response: I do not know that there necessarily was any such relevance. I assume that leaks which occurred after Mr. Halperin left the government and which were based on information developed in the government after Mr. Halperin's departure, and as to which Mr. Halperin could not have had access through has contacts with former associates on the National Security Council staff and elsewhere in government, were not relevant to the continuation of the electronic surveillance on Mr. Halperin. However, because of his position as Chief of the National Security Council Planning Group, Mr. Halperin received extensive exposure to classified information in many areas including Southeast Asia and the SALT negotiations, much of which remained classified long after Mr. Halperin left the government. I do not know whether or not leaks of classified information in these and other areas occurring after Mr. Halperin left the government would be relevant to the continuation of his surveillance. I had no occasion to address specifically the continuation of the program.

I am not in a position to know Mr. Halperin's sources of information after he left my staff. I ceased to follow the electronic surveillance program after May 12, 1970, except with respect to some specific situations that might have been brought to my attention.

*32. In the affidavit described in interrogatory 29, you stated that since the leaks continued the surveillance continued. Please explain the meaning of that sentence in*

*light of the fact that Mr. Halperin did not have access to the information which leaked after he left the government.*

Response: The above statement with respect to my affidavit is incorrect. In that affidavit stated, in paragraph 10, that "notwithstanding the investigation . . . being conducted by the FBI and additional governmental efforts to curb the unauthorized disclosure of classified information, press leaks . . . continued through 1969, 1970 and 1971."

*33. What was the subject of your May 5, 1969 meeting with Mr. Hoover in his office? Did you discuss leaks or electronic surveillance? Did you discuss Morton Halperin? If so, give details.*

Response: I have no recollection of such meeting.

*34. In your several May 9th telephone conversations with Mr. Hoover regarding the Cambodian bombing leak, did you or he make any references to any previous discussions related to leaks, the loyalty of your staff, or wiretapping with Mr. Nixon or to any prior authorization to begin an electronic surveillance of Mr. Halperin? If not, why not?*

Response: I do not recall the particulars of my telephone conversations of May 9, 1969, with Mr. Hoover, other than as set forth in the several memoranda he wrote concerning them, which I have seen. I do not recall any discussion of wiretapping. At that time, my understanding was that the wiretapping program had been authorized and that, therefore, Mr. Hoover or his staff had the right to use wiretapping in their investigations. I do not recall any discussions as to when the program would actually be put into effect. I called Mr. Hoover at President Nixon's request, to express the President's and my concern about the seriousness of the leak appearing that date and to request an immediate investigation.

*34 A. In those May 9th conversations did Mr. Hoover indicate in any way that the FBI was about to begin wiretapping in the Halperin home telephone on May 9, 1969?*

Response: He did not.

*34. B. Did you intend your May 9 request to Mr. Hoover to investigate the Cambodian bombing leak to be a request to him to conduct electronic surveillance of any or all individuals that he considered as possible sources of the leaked information? In light of the prior meetings between you, Mr. Nixon, Mr. Hoover and Mr. Mitchell, would it have been reasonable for Mr. Hoover to have interpreted your May 9 request as a request for electronic surveillance?*

Response: As stated in the response to Question (34), I requested Mr. Hoover to investigate the leak appearing in the Beecher article of May 9. I did not request any particular method of investigation. In this respect, I think Mr. Hoover's memoranda of May 9 fairly reflect my request.

*35. Did you take Mr. Hoover's remarks to you on the telephone on May 9th (as distinguished from whatever conclusions you may have drawn from his May 13th letter) to indicates that he had begun an electronic surveillance of Mr. Halperin or anyone else?*

Response: I did not.

*36. Please identify all conversations with any persons which you had on May 9–12, 1964 (apart from the May 9th conversations with Mr. Hoover), regarding the May 9th leak of the Cambodian bombing story. For each conversation indicate whether it was in person or by phone, who was present or participated, and what was discussed. If you cannot distinguish specific conversations, indicate generally with whom you discussed the leak of May 9th, and what the content of those conversations were.*

Response: I most certainly discussed the Cambodian bombing leak with President Nixon and undoubtedly discussed it with my associates who were then with me in Key Biscayne, including Messrs. Haig, Halperin, and Eagleburger. Before I telephone Mr. Hoover on May 9, I had discussed the leak with the President who requested that steps be taken urgently to find the source of the leak.

We were principally concerned that the leak would provide an excuse for North Vietnam to expand its operations in Cambodia. As nearly as I can recall, I think I reported to Messrs. Halperin and [A] that Mr. Hoover had suggested to me that one of them might be the source of the leak.

I may have had conversations with Attorney General Mitchell concerning the Beecher story, as he was at that time also in Key Biscayne, although I do not specifically recall such a conversation.

With respect to persons not identified by name, see objections to Interrogatory 2 and Interrogatory 12.

*37. Did you in any conversation with Mr. Nixon on Mr. Mitchell discuss whether the May 9th story was a leak which should trigger an electronic surveillance program pursuant to an earlier decision. If no, why not?*

Response: I do not recall any such conversation. There would have been no point to it. The necessary decisions had already been made.

*38. (a) Did you on May 9th or May 10th ask Alexander Haig to prepare for you a list of those individuals who had access to the Cambodian bombing information? Did Colonel Haig prepare such a list? If so, was Mr. Halperin on it? Please identify all of the individuals who were on the list as far as you can remember.*

Response: I do not recall requesting General Haig to prepare such a list.

*(b) Whether or not such a list was prepared or discussed, who to your knowledge, had such access? To the extent you know of agencies in which personnel had such access but do not know individual names, please give an estimate of the number of such persons and who in the agency would be able to provide a fuller list.*

Response: There were a number of persons who knew about the Cambodia bombing. They included the President, those in the military line of command who carried out the bombings, the Secretary of Defense, staff officers and other assigned to the project, persons in the White House Situation Room, the Chairman of the Joint Chiefs of

Staff and, in my office, General Haig, Messrs. Eagleburger, Halperin and probably Sneider.

*39. Did you on May 9th or May 10th provide Colonel Haig with the names of Morton Halperin, Helmut Sonnenfeldt, Robert Pursley and Daniel Davidson and direct that he take those names to Mr. William Sullivan of the FBI? If so, for each individual please identify why he was included on the list. Did you instruct Colonel Haig to request surveillance of those four individuals? If so, by what authority did you direct Colonel Haig to make the request for surveillance to the FBI? If you gave Colonel Haig any other instructions with respect to the list, please state those instructions.*

Response: Some time after the Oval Office meeting, I passed on to General Haig the decision taken and instructions given at that meeting, as stated in the responses to other Questions. I also gave him the four names selected at the Oval Office meeting. I may have talked with General Haig in Key Biscayne, and probably did, telling him that he should get in touch with Sullivan and furnish names as directed by the President I do not recall giving General Haig the name of [N]. It is likely, however, that [O's] name was forwarded to the FBI by General Haig because of his access to information which had been leaked. If so, General Haig and I probably had previously discussed [P's] access to leaked information.

With respect to persons not identified by name, see objections to Interrogatory 2 and Interrogatory 12.

Response: I do not recall whether General Haig reported to me his conversation with Mr. Sullivan.

*40 A. Did you ever tell Colonel Haig that he was to tell Mr. Sullivan that the tap on Halperin or the taps in general would last only for a few more days?*

Response: As stated in responses to previous questions, after the meeting in the Oval Office at which the electronic surveillance program was authorized, I discussed it with General Haig, particularly the role of my office in carrying out the program. I believe I indicated to General Haig my understanding that the program would last only a short

time. I do not recall discussing the duration of any specific surveillance.

*41. If your understanding was that Mr. Hoover already had authority from the President to begin a surveillance of Halperin, Davidson, Sonnenfeldt and Brandon, why did you feel it necessary to direct Colonel Haig to bring three of these four names plus the name of Colonel Pursley to Mr. Sullivan.*

Response: To the best of my recollection, the principal purpose of General Haig's first meeting with Mr. Sullivan was to establish liaison and to work out the parameters of the program and the role of my office. In addition, as I indicated in response to Question 39, a further purpose of the meeting may have been to reconfirm to Sullivan the names selected at the Oval Office meeting and that [S] may also have had access to leaked information.

With respect to persons not identified by name, see objections to Interrogatory 2 and Interrogatory 12.

*42. If you interpreted Mr. Hoover's telephone conversations with you of May 9th, to indicate that he would undertake an electronic surveillance of Mr. Halperin, why did you feel it necessary to direct Colonel Haig to bring Mr. Halperin's name to Mr. Sullivan and request a surveillance on May 10th?*

Response: I did not so interpret Mr. Hoover's telephone conversations with me on May 9.

*43. (a) When and how did you first learn that a wiretap had in fact been placed on the Halperins' telephone?*

Response: I do not recall. I probably learned about the tap at the time of the first report to me of information gathered therefrom.

*(b) On learning that fact, did you form any conclusion as to the legality of the tap?*

Response: The Attorney General had explicitly advised that electronic surveillance with respect to the national security leaks was entirely legal. It never occurred to me, upon learning that a tap had been placed on Mr. Halperin's

telephone, to question the legality of that tap or the program authorized by the President.

*(c) If yes, what was that conclusion?*

Response: Not applicable.

*(d) If you concluded the tap was legal, state the basis for that conclusion.*

Response: I did not make any further conclusion at that time. See previous responses as to advice given by the Attorney General and Mr. Hoover.

*(e) Did you ever from Jan. 21, 1969, to Feb. 12, 1971, discuss the legality of this or similar taps with any person?*

Response: Yes.

*(f) If yes, with whom, when and what was said?*

Response: With President Nixon, Attorney General Mitchell and Director Hoover as stated in the responses to previous questions.

*(g) Did you ever see any written statement addressing or in any way referring to the legality of this on similar wiretaps?*

Response: I do not recall any written statements or opinions concerning the legality of these wiretaps during the period when they were in effect.

*(h) Did you ever ask anyone for advice on the legality of this or similar wiretaps?*

Response: No, except as stated in response to previous questions.

*43(sic)A. (a) Please state the time, circumstances, and substance of any "assurances of the Attorney General as well as the Director of the FBI that the practice* [of wiretapping] *had been employed in all prior administrations since 1940, that the Department of Justice had long-established procedures for the initiation and control of wiretaps and that the program was lawful." (Hearings, p. 171.)*

Response: These assurances were given as mentioned in response to previous questions.

*(b) Were you aware that the usual "procedures for the initiation and control of wiretaps" would not be employed in this case pursuant to Colonel Haig's instructions? If so, please summarize any discussion of the effect of that fact on the legality of the tap.*

Response: No

*(c) If any basis was given for the assurance that "the program was lawful" please state what it was, who gave it and when.*

Response: See responses to previous questions.

*44. (a) Who (other than Messrs. Nixon, Mitchell, Ehrlichman, Haldeman, Haig and Sullivan) knew that a tap had been placed on the Halperins' phone?*

Response: Most certainly Mr. Hoover knew that a tap had been placed on Mr. Halperin's line as well as those concerned with the operations in the FBI and the Department of Justice. Secretaries and other members of my staff may well have known of one or more of the taps.

*(b) Did you ever tell anyone other than those persons.*

Response: I have testified at length concerning the taps and have given press conferences on the subject.

*45. Please describe any conversations which you had on or after May 10, 1969, in which the wiretap program in general and specifically the wiretap of Dr. Halperin was discussed. Specifically, please identify all meetings at which you discussed the wiretap with William Sullivan, J. Edgar Hoover, John Ehrlichman, H.R. Haldeman, Alexander Haig, or Richard Nixon. For each meeting, identify as precisely as you can, who was present and what was discussed.*

Response: I cannot describe with particularity all conversations I might have had on or after May 10, 1969, in which the wiretap program in general and specifically the wiretap of Mr. Halperin was discussed. During the course of the program, I undoubtedly discussed it from time to time with President Nixon, the Attorney General, Mr. Haldeman, and General Haig. I do not recall, however, particular discussions concerning the wiretap of Mr.

Halperin other than as stated in the responses to this and other questions. Since the public disclosure of the program, I have, of course, discussed it publicly and with many people and have testified before the Senate Foreign Relations Committee with respect to the wiretap on Mr. Halperin.

From late April, 1969, until about May 15, 1970, I had occasional discussions with General Haig concerning the operations of the program, certain information acquired therefrom and persons within the NSC staff who had access to sensitive information.

I did discuss the wiretap program and its results from time to time with President Nixon although I do not recall the precise dates or specific conversations. I recall a continuing concern on his part, as well as on my part, with the leaks that occurred notwithstanding all the efforts that were being made to stop them.

I met with Mr. Hoover on June 4, 1969, and expressed to him my view that the taps in general should be stopped as soon as possible. General Haig had prepared talking points for me for use at this meeting and may have attended the meeting with me.

During the Spring of 1970, it became clear to me that I was in no position to take any action with respect to the occasional wiretap summaries that I received. I pointed out on a number of occasions to President Nixon that my office would serve best if it concentrated entirely on foreign policy matters and if internal security matters were handled elsewhere. Subsequently, in May 1970, I was informed by Mr. H. R. Haldeman that the President had decided that Mr. Haldeman would handle the White House involvement with the wiretap program in the future. After that transfer occurred, although I do not recall with particularity any conversations between Mr. Haldeman and myself regarding the wiretap program, he may occasionally have brought to my attention matters which he considered relevant to the NSC staff.

After May of 1970, informal liaison was maintained between General Haig and Mr. Sullivan of the FBI. Mr. Sul-

livan would, I understand, call up General Haig if he had information of sufficient gravity. It is possible that General Haig informed me of such calls on one or two occasions.

As I testified before the Senate Foreign Relations Committee my logs show that I had a meeting with Mr. Mardian on August 5, 1971. Mr. Mardian wanted to check to see what documents I had relating to the wiretap program. I turned him over to General Haig, and I was told that he did review whatever records my office then had relating to the wiretap program.

*46. Did you on May 20, 1969, visit William Sullivan's office? Did you then examine wiretap logs or other papers related to wiretapping? If so, please provide your recollection of what was discussed and what papers you examined when you visited Mr. Sullivan's office. If you do not recall such a visit, do you have any information to indicate that Mr. Sullivan's memorandum dated May 20, 1969, about such a meeting, is inaccurate? Please review Mr. Sullivan's May 20, 1969, letter to Mr. Hoover and confirm or deny the accuracy of his report of each statement attributed to you. If you are confident no such visit took place, please so state. In that case, please state why Mr. Sullivan wrote Mr. Hoover that it took place.*

Response: I have no recollection of having visited Mr. Sullivan's office at any time. I have read what is alleged to be a letter from Sullivan to Mr. Hoover dated May 20, 1969, which does not revive any recollection. I cannot, therefore, conform or deny the accuracy of his report nor why, if he wrote the report, he did so.

*47. Please identify the conversations referred to in the "talking points" prepared by Colonel Haig for your meeting with Mr. Hoover on June 4, 1969, in which Colonel Haig indicates that you had discussed the wiretap program with Mr. Nixon and with Mr. Ehrlichman and Mr. Haldeman. Please identify and give details of the conversations referred to. If you do not recall any such conversations, please state whether you believe Colonel Haig would have indicated to you that such conversations by you took place if they did not.*

Response: I do not recall and cannot identify the particular conversations referred to.

*48. Please state your recollection of what was discussed at the meeting with Mr. Hoover for which the talking points were prepared.*

Response: I do not recall the details of the conversation I had with Mr. Hoover on June 4, 1969. I assume that I followed the talking points that were prepared. What else was said in this conversation would be impossible for me to reconstruct now.

*48. A. Please examine Colonel Haig's "talking points" for that meeting, and indicate whether you made the statement he suggested. Please identify the handwriting in the upper right hand corner. Please indicate whether you have made or caused to be made any search of a file marked "wiretapping" and the results of such search.*

Response: I do not recall whether I made the exact statement called for by the talking points. I cannot identify the handwriting in the upper right hand corner. I am advised that there is not any file in the NSC entitled "wiretapping."

*48. B. How were the summary letters addressed to you by Mr. Hoover received and handled in your office? Who gave them to you? Who had access to your desk during the time they were on your desk? Did David Young have any access? To whom did you give the letters after reading them? Where were they filed and by whom? Where are these files now? To the extent you did not know or recall the procedure for handling, please state who would.*

Response: As I recall, the summaries were delivered to my office, probably to General Haig or his secretary. They were reviewed by General Haig who would call such of them to my attention as he believed appropriate. Occasionally he would put those he considered significant in my "in basket" and those that arrived there may or may not have been seen by me. Presumably, General Haig, my secretaries and those working closely with me from time to time had access to my "in basket" and would clean it out

occasionally. David Young was my appointments assistant from January 1970 to January 1971.

Letters received by me were returned to General Haig. I understand that the letters were returned to the FBI. Their travels since their return to the FBI have been the subject of much inquiry, but as to that I have no personal knowledge.

*49. Please examine each FBI letter addressed to you containing information from the electronic surveillance of the Halperins and identify which of the letters you remember seeing before and when you saw it. Also please examine each letter to determine whether any notation on it indicates that you did or did not see the letter at the time. Specifically please examine the check mark which appears on a number of the letters and explain its meaning. Please also examine the initials HK which appear on some of the letters and indicate the meaning of those initials.*

Response: As for the letters which are unmarked. I have no way of knowing whether or not I saw them. The letters which I did see, I probably saw within a day or two after their transmittal, but that I cannot recall with certainty. It has been my usual practice to mark memoranda that I have seen with my initials "HK". On the letter dated October 24, 1969, the initials "HK" may have been added by my appointments assistant on the presumption that I had seen the letter; it does not look like my handwriting. The check mark which appears on other letters may well have been written by me but I cannot be certain. The meaning of such notations is that I have seen the paper in question and have no further business with it and it can be filed or otherwise dispensed with. However, check marks are not my usual method of indicating I have seen a particular document or paper, and may have been added by my office staff simply to indicate that they had been on my desk and should not, therefore, be sent to me again.

*50. Did you ever pass on the letters to Mr. Nixon? To anyone else? If so, please explain.*

Response: I understand that the letters addressed to the President received by General Haig were in turn passed along by him to Mr. Ehrlichman's office. I do not recall any instance of my passing on any of these letters to President Nixon personally or to anyone else.

*51. Did you ever discuss the content of any of the letters with Richard Nixon or with anyone else? If so, please identify each conversation, who was present and what was discussed.*

Response: I discussed some of the letters with General Haig or he would brief me concerning them. I do not recall any discussions with President Nixon concerning particular letters, although there were such discussions. I think I also had occasional discussions with Mr. Haldeman, but with respect to which letters and concerning whom I cannot recall.

*52. Did you ever see the letter from Hoover addressed to you dated Dec. 29, 1969 relating to a prospective article by Clark Clifford? Did you ever have any conversation with Colonel Haig or anyone else concerning that letter or action based on it?*

Response: I do not recall ever seeing the letter referred to having any conversations with General Haig or anyone else concerning it or action based on it.

*53. Did you give Colonel Haig or anyone else instructions about what should be done with the letters addressed to Mr. Nixon? If so, state what instructions you gave and to whom? Were you aware of the fact that the letters addressed to Mr. Nixon were delivered to your office? Do you know what was done with those letters? If so, describe the procedure.*

Response: I do not recall any particular instructions given by me regarding the letters addressed to President Nixon.

*54. Did you on May 9th, 1969, discuss the Cambodian bombing leak with Morton Halperin? If so, please relate as fully and precisely as you can the content of that conversation.*

Response: I did discuss the Cambodian bombing leak with Morton Halperin on May 9, 1969, and I believe I told him that he was suspected of being the source of the leak. I probably told him of my conversation with Mr. Hoover but I cannot be certain.

*55. Did you agree with Mr. Halperin that his access to the most sensitive material available to you would be cut off for a time in order to establish that he was not the source of leaks?*

Response: I have seen Mr. Halperin's affidavit in this matter, sworn to November 12, 1973, in which he indicates that on May 9, 1969, I told him that for a period of time he would not be given access to more sensitive information so that if it leaked he could not be blamed. I recall such a conversation with Mr. Halperin and it could have been on May 9 or later. In any event, in May 1969, or soon thereafter, Mr. Halperin was denied access to some of the most sensitive information. Also, at about this time distribution of sensitive materials throughout the NSC was restricted. I may have also directed that particular materials be confined to specified people. Further, attendance at meetings became restricted, but I do not recall any orders at any time to cut off Mr. Halperin completely from all distribution of sensitive material. I probably told him from time to time what practices were being followed.

*56. Did you see to it that Mr. Halperin's access to such information was in fact cut off?*

Response: See response to Question 55.

*57. Did Mr. Halperin's access to this information ever in fact resume?*

Response: As stated in the response to Question 55, Mr. Halperin's access to information was at no time entirely cut off but remain restricted.

*58. Please describe your conversations with Mr. Halperin beginning to July, 1969 related to his desire to resign from the staff of the National Security Council. Did you urge Mr. Halperin not to resign from the staff? Please state whether the FBI tape summary of your conversation*

*with Mr. Halperin of August 9, 1969, (a copy of which is an exhibit to General Haig's deposition) is substantially accurate.*

Response: I had several conversations with Mr. Halperin during the summer of 1969 regarding his desire to leave the NSC and the position he should occupy within the Staff. I had high admiration for Mr. Halperin's ability and wanted to have him on my staff. However, it was my impression that he was not satisfied with the role I had given him and desired wider responsibility. Friction developed between Mr. Halperin and others on my staff and I was unable to work out an organizational arrangement which would satisfy Mr. Halperin and others concerned. During this period the organization of the NSC staff was more fully developed, with General Haig taking on the duties of my chief deputy and managing the day to day flow of materials.

While I do not recall the details of the conversation of August 9, 1969, I have no reason to doubt that the tap summary of Mr. Halperin's conversation with me is substantially correct.

*59. In September, 1969, when you finally agreed to accept Mr. Halperin's resignation from the NSC staff, did you request that he continue as a consultant?*

Response: I did.

*60. Was Dr. Halperin used as a consultant at any time prior to his resignation from that status in May of 1970, or was he simply carried on the list of people eligible to be consulted?*

Response: I believe Mr. Halperin acted as a consultant on only one occasion after his resignation.

*61. When Dr. Halperin resigned from the NSC staff in September 1969, did you notify the FBI of that fact? Did you or anyone on your staff discuss whether the Halperin tap should be continued? If so, give details. Did you recommend to the FBI that the surveillance of Mr. Halperin be terminated since he would no longer have access to classified information? Did you direct the FBI to termi-*

*nate the surveillance of Mr. Halperin? Did you in fact on or about September 28, 1969, direct the FBI to continue the surveillance of Mr. Halperin and Henry Brandon while discontinuing other surveillances then in effect? If so, please set forth in detail your reasons for ordering the FBI to continue the Halperin surveillance. If you do not recall, please state whether you have any reason to doubt the accuracy of Mr. Sullivan's memo of September 15, 1969, which states that you did. If you did not so direct, why would Mr. Sullivan have stated that you did?*

Response: I did not personally notify the FBI when Mr. Halperin resigned from the NSC staff in September 1969. I do not recall any discussions with anyone as to whether the Halperin tap was then in effect or should be continued. I did not "in fact on or about September 20, 1969 direct and FBI to continue the surveillance then in effect" I cannot explain Mr. Sullivan's memorandum of September 15, 1969, and it is not based on any authorization or instructions given by me.

*62. When Mr. Halperin resigned as a consultant to the NSC staff in May 1970, did you at that time notify the FBI or anyone else of his resignation and suggest the removal of the wiretap of his telephone? Did you at that time direct the FBI to terminate the wiretap of his telephone?*

Response: I did not notify the FBI or, insofar as I can recall, anyone else of the resignation of Mr. Halperin as consultant in May 1970. I may have signed an acceptance or other routine documents but I do not recall having been aware that this wiretap was still in effect at that time.

*63. Did Mr. Halperin in fact have any access to classified information as a consultant to the NSC staff in the period September 1969 to May 1970?*

Response: Insofar as NSC material was concerned, I assume that Mr. Halperin had access thereto in respect of matters on which he was consulted and possibly with respect to some other matters. I have no personal knowledge of the extent to which Mr. Halperin received classified information from the NSC during this period. His Top Secret clearance continued.

*64. Please relate any conversations you had with Col. Haig or any other person regarding the termination of surveillance of Mr. Halperin, or of any other individual, or of the program as a whole. State when these conversations occurred and what was discussed.*

Response: I do not recall any conversations with General Haig or any other person regarding the termination of surveillance on Mr. Halperin. I have stated in response to previous questions that when the program was commenced I urged that it be continued for the shortest time possible.

*65. Were you aware of the fact that Daniel Ellsberg had been overheard on the telephone of Morton Halperin?*

Response: Yes.

*66. If so, when did you become aware of this fact?*

Response: To the best of my recollection, when it became public knowledge.

*67. When did you become aware that Daniel Ellsberg had been indicted for conspiracy regarding the release of the Pentagon Papers?*

Response: I first became aware of Ellsberg's indictment when it was publicly announced.

*68. Were you aware of the fact that in connection with that indictment an order had been issued requiring the government to report to the court any overhearing of Dr. Ellsberg on an electronic surveillance? If so, when did you become aware of this order and if you were aware Dr. Ellsberg had been overheard on the Halperin tap, did you take any steps to notify anyone that Dr. Ellsberg had been so overheard?*

Response: Prior to May 1973, I was not aware of any legal obligation or court order requiring the Government to report to the court any overhearing of Dr. Ellsberg on electronic surveillance. In May 1973, the overhearing of Dr. Ellsberg became public knowledge; thus, I did not take steps to notify anyone of the overhearing. The only legal consideration affecting the wiretap program that was known to me prior to May 1973 was the view of the Attor-

ney General and the Director of the FBI that the wiretaps were clearly legal.

*69. Did you, during or prior to June 1971, see the summary letter of September 3, 1969, reporting a conversation of Daniel Ellsberg? In June 1971, in the discussions of the release of the Pentagon Papers, did you assert that Dr. Ellsberg was known to be a drug user? If so, was this information derived in whole or in part from or corroborated by your knowledge of conversations overheard on the plaintiff's telephone?*

Response: To the best of my recollection, I did not during or prior to June 1971, see the summary letter of September 3, 1969. I do not recall having asserted that Dr. Ellsberg was "known to be a drug user" in the discussions of the release of the Pentagon Papers in June, 1971. I do recall having discussed my personal recollections of Ellsberg. If I expressed a view as to whether or not Dr. Ellsberg used drugs, it would have been based on my own personal impressions from having seen and been with him in the past.

*70. Were you ever aware that a physical surveillance (trial) was being conducted by the FBI of Morton Halperin or Henry Brandon? Were you informed that such a surveillance had been made of them at a lunch on August 6, 1969.*

Response: I have no knowledge of whether physical surveillances was conducted by the FBI on Mr. Halperin.

Federal defendant Kissinger objects to responding to this interrogatory as it relates to Henry Brandon. Because Brandon is not a party to this litigation, inquiry as to him is not relevant. Further, any response by the Federal defendant may constitute an infringement of Brandon's right of privacy.

*71 A. What records did you make in the period Jan. 21, 1969 to Feb. 12, 1971 of (i) meetings you attended (ii) persons who visited your office (iii) telephone conversations in which you participated (iv) correspondence you wrote or received?*

Response: With respect to records of meetings I attended or persons who visited my office:

From January 21, 1969, through October 21, 1969, an appointments book was kept, listing daily appointments as they were scheduled. This usually listed only formal meetings, outside appointments, or appointments with outside visitors. From October 22, 1969, through February 12, 1971, a daily record of schedule was kept, which recorded the events of the day as they occurred. This record, unlike the appointments book, included some of my informal activity in the White House and reflects all those, including staff, who entered my office. These records were kept by my secretaries, who were usually not in a position to record subject matter of discussions, whom I met with in all meetings outside my own office, or my daily activities when outside of Washington.

With respect to records of telephone conversations in which I participated and correspondence I wrote or received during the period January 21, 1969 through February 12, 1971:

Business telephone conversations from my White House office during this period were usually monitored by my personal secretaries and records prepared, in accordance with routine government practice, in order to facilitate implementation and follow-up of business transacted.

Correspondence was deposited with White House Central Files or Substantive Files.

*71. B. Where and in whose custody are such records now? If you do not know where they are now, where and in whose custody where they are now, where and in whose custody were they last, to your knowledge?*

Response: All such records, with the exception of the record of my telephone calls, are in the White House. They are in the custody of the NSC staff. The telephone records are in the State Department, in the custody of Mr. Lawrence S. Eagleburger.

/s/ _____

HENRY A. KISSINGER

Subscribed and sworn
to before me this
day of January, 1976.

Notary Public

My Commission expires

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Respectfully submitted,

RICHARD L. THORNBURGH
*Assistant Attorney General*

/s/ _____

ROBERT L. KEUCH
*Attorney, Department of Justice*

/s/ _____

EDWARD S. CHRISTENBURY
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# Supreme Court of the United States

No. 79-880

HENRY KISSINGER, ET AL, PETITIONERS,

*v.*

MORTON HALPERIN, ET AL.

ORDER ALLOWING CERTIORARI. Filed May 19, 1980.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

Mr. Justice Rehnquist took no part in the consideration or decision of this petition.

MAY 19, 1980